TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 175

MARCUS HAUGE, APPELLANT,

vs.

THE CITY OF CHICAGO

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED JULY 9, 1936.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [Caption omitted]

[fols. 2-4] [File endorsement omitted]

[fol. 5]

IN SUPREME COURT OF ILLINOIS

OCTOBER TERM, A. D. 1935

CITY OF CHICAGO, Appellee,

vs.

MARCUS HAUGE, Appellant

Appeal from Municipal Court of Chicago

Honorable Frank M. Padden, Judge Presiding

Abstract of Record—Filed September 11, 1935

Placita

QUASI-CRIMINAL COMPLAINT—Filed March 5, 1935

STATE OF ILLINOIS,
City of Chicago,
First District, ss:

The Municipal Court of Chicago

Robert Hickey being first duly sworn, on his oath, on information and belief deposes and says that Marcus Hauge, 1220 N. Liberty St. Morris, Ill. of said City of Chicago, on the 4th day of Mar. A. D. 1935, at the City of Chicago, [fol. 6] aforesaid, Making coal delivery without the proper seal for same in violation of Section 2947 of the Revised Chicago Code of 1931.

Robert E. Hickey.

Subscribed and sworn to before me this — day of —— A. D. 19—. Joseph L. Gill, Clerk of The Municipal Court of Chicago.

I have examined the within complaint and the person presenting the same, and have heard evidence thereon, and

am satisfied that there is probable cause for filing the same. Leave is given to file said complaint and It Is Ordered that a warrant issue against the accused.

F. M. Padden, Judge of The Municipal Court of Chicago.

ORDER GRANTING LEAVE TO FILE COMPLAINT, ETC.—March 5, 1935

Judge Eugene Holland

On motion of Robert Hickey, in the name of the plaintiff herein, and the presiding Judge having examined said complaint and having examined under oath the person presenting it and being satisfied that there is probable cause for filing the same, ordered that leave is hereby granted to file said complaint instanter.

It appearing to the Court that defendant was arrested without warrant, etc., and is present in open court, the Court takes jurisdiction of the person of the defendant and the bailiff is ordered to take such defendant into his [fol. 7] custody so that the bailiff may have him before this Court to answer to the plaintiff concerning the offense charged in said complaint.

It is ordered that this cause is set for trial March 19, 1935.

Appearance entered March 5, 1935:

Enter the appearance of the defendant, Marcus Hauge, and my appearance as his attorney: Thomas C. McConnell, attorney for defendant.

PETITION FOR CHANGE OF VENUE—Filed March 19, 1935

Said petition, under oath, prayed a change of venue from Judge Eugene Holland because the defendant feared that he would not receive a fair trial because said Judge is prejudiced against him.

ORDER TRANSFERRING CAUSE—March 19, 1935

Judge Eugene Holland

It is ordered that this cause be transferred to the Chief Justice for assignment or such other disposition as he may deem proper.

ORDERS SETTING CAUSE

Order entered March 19, 1935: Judge John J. Sonsteby: Set for trial in Room 1120, 2:00 P. M.

Order entered March 19, 1935: Judge Frank M. Padden: It is ordered that this cause is hereby postponed and set for trial March 20, 1935.

CERTIFICATE FOR APPEAL DIRECTLY TO THE SUPREME COURT—Filed March 20, 1935

I, Frank M. Padden, presiding judge, hereby certify pursuant to section 75 of the Civil Practice Act that in the above entitled cause the validity of a municipal ordinance [fol. 8] is involved and that in my opinion the public interest requires a direct appeal to the Supreme Court.

Signed this 20th day of March, 1935.

Frank M. Padden, Judge.

PROPOSITION OF LAW—Filed March 20, 1935

The above defendant requests the Court to hold the following to be the law of this case:

The burden of proof is on the plaintiff, City of Chicago, to show that the sale of the coal involved in this proceeding to the person or persons receiving said coal from the defendant's truck took place within the corporate limits of the City of Chicago, and if the Court finds from the evidence that the said sale of the said coal took place outside of the corporate limits of the City of Chicago, then the finding of the Court should be for the defendant.

Marked "Refused, F. M. Padden, Judge."

FINDING AND JUDGMENT—Entered March 20, 1935

Judge Frank M. Padden

The said defendant being duly advised by the Court as to his right to a trial by jury in this cause, elects to waive a trial by jury, and this cause is, by agreement in open

court between the parties hereto, submitted to the Court for trial without a jury.

Now come the parties to this cause, and thereupon this cause comes on in regular course for trial before the Court without a jury, and the Court having heard the evidence, and the arguments of counsel, and being fully advised in the premises enters the following finding, to wit:

"The Court finds the defendant guilty of a violation of [fol. 9] the ordinance described in the complaint herein and assesses a fine against said defendant in the sum of Seventy Five and No/100 Dollars ($75.00)."

This cause coming on for further proceedings herein, it is considered by the Court that the plaintiff have judgment on the finding herein of the Court, it appearing to the Court that said defendant has duly and regularly waived a jury trial in this cause, and it is considered by the Court that the plaintiff have and recover of and from the defendant a fine in the sum of Seventy-Five and No/100 Dollars ($75.00), in form as aforesaid assessed, and also the costs of this suit taxed at $10.00, and that execution issue for the amount of said fine and costs. And it appearing to the Court that said fine accrued to the plaintiff in consequence of the violation by the defendant of the ordinance of the plaintiff described in the plaintiff's statement of claim herein, known as Section No. 2947, the Court finds that it has jurisdiction of the subject matter of this cause, and of the parties hereto, and that said defendant has been duly and regularly convicted of the violation of said ordinance according to law, and that any person convicted of a violation of said ordinance, may under the law, be imprisoned in the House of Correction of said city, for non-payment of any fine imposed for such violation.

It is ordered by the Court that execution herein be and hereby is stayed to March 26, 1935.

Appeal bond, $200—thirty days.

NOTICE OF APPEAL—Filed March 25, 1935

The above named defendant, Marcus Hauge, hereby appeals to the Supreme Court of Illinois from the judgment [fol. 10] rendered against him and in favor of the City of

Chicago, plaintiff, in the above entitled cause heretofore, to-wit, on the 20th day of March, A. D. 1935.

Said appellant prays that the Supreme Court of Illinois will reverse said judgment without remanding or grant to the appellant such other or further relief as to the said Supreme Court shall seem just.

Marcus Hauge, by Thomas C. McConnell, His Attorney.

Notice filed March 27, 1935:

To Honorable Wm. H. Sexton, Attorney for Appellee:

Notice of filing notice of appeal.

On March 25, 1935, I filed with the Clerk of the Municipal Court of Chicago a notice of appeal from the judgment rendered herein, copy of which notice I hand you herewith.

Thomas C. McConnell, Attorney for Defendant-Appellant.

Received a copy of above notice and of notice of appeal therein mentioned, this 25th day of March, 1935.

William H. Sexton, Corporation Counsel, Attorney for City of Chicago, Appellee.

APPEAL BOND

Said bond signed by Marcus Hauge, as principal, and United States Casualty Company, a New York corpora-
[fol. 11] tion, as surety, is in the penal sum of $200, is dated March 25, 1935, recites the judgment obtained against said Marcus Hauge by the City of Chicago for the sum of $75 and costs of suit on March 20, 1935, and that said Hauge has perfected an appeal to the Supreme Court of the State of Illinois from said judgment and is conditioned to be void if the said Hauge shall duly prosecute his said appeal to effect and pay the amount of the judgment, interest, damages and costs rendered and to be rendered against said Hauge in case the said judgment shall be affirmed.

It is endorsed: "Approved by me this 1st day of April, 1935. (Signed) Frank M. Padden, Judge."

Notice of appearance filed April 4, 1935:

City of Chicago, a municipal corporation, plaintiff-appellee, appears in this appeal by William H. Sexton, cor-

poration counsel, and Michael L. Rosinia, prosecuting attorney.

Received a copy of the foregoing notice this 4th day of April, 1935.

Thomas C. McConnell, Attorney for Defendant-Appellant.

NOTICE OF FILING PRÆCIPE AND PRÆCIPE—Filed April 6, 1935

To Honorable Wm. H. Sexton, Attorney for Appellee:

Please take notice that on April 4, 1935, we shall file with the Clerk of the Municipal Court of Chicago a præcipe [fol. 12] for record, a copy of which is handed you herewith.

Thomas C. McConnell, Attorney for Defendant-Appellant.

Received copies of the above notice and præcipe for record therein referred to, this 3rd day of April, A. D. 1935.

William H. Sexton, Attorney for Plaintiff-Appellee.

The præcipe is signed by the attorney for the defendant-appellant and is directed to the clerk of the Municipal Court of Chicago, requesting him to prepare a transcript of record for filing in the Supreme Court of Illinois, the specific items of which are here omitted in printing because the effect of such præcipe and of the præcipe for additional parts of the record, filed April 6, 1933, by the attorneys for the City of Chicago, appellee, requires the preparation of a complete transcript of record.

Item No. 15 of appellant's præcipe is as follows:

"15. All original reports of proceedings hereafter filed herein (if an order be entered or stipulation be filed to use such originals); otherwise insert copies of all such reports of proceedings."

PRÆCIPE FOR ADDITIONAL PARTS OF RECORD—Filed April 6, 1935

Said præcipe is signed by the attorneys for the appellee, City of Chicago, and bears a receipt of the attorney for the

defendant-appellant for a copy of said præcipe, and requests the clerk of the Municipal Court of Chicago to in-
[fol. 13] clude in the transcript of record for filing in the Supreme Court of Illinois on appeal, the following:

1. Notice of appearance of plaintiff-appellee, City of Chicago, filed April 4, 1935.

2. All orders, notices, pleadings, papers and documents filed or entered in said cause not otherwise specified in this præcipe and the præcipe for record heretofore filed herein by defendant-appellant.

3. This præcipe.

ORDERS EXTENDING TIME

Order entered May 22, 1935: Judge John J. Sonsteby:

By agreement of the parties hereto, it is ordered by the Court that the time for defendant to file report of proceedings on trial be and the same is hereby extended to and including June 23, 1935.

Order entered June 22, 1935: Judge John J. Sonsteby:

By agreement of the parties hereto, it is ordered by the Court that the time for filing report of proceedings in this cause be and the same is hereby extended to July 8, 1935.

Order entered July 8, 1935: Judge John J. Sonsteby:

Bill of exceptions presented.

ORDER APPROVING BILL OF EXCEPTIONS

Order entered July 8, 1935: Judge Frank M. Padden:

It is ordered by the Court that the bill of exceptions presented herein be and the same is hereby approved, and ordered filed.

[fol. 14] ORDER APPROVING REPORT OF PROCEEDINGS

Order entered July 8, 1935: Judge Frank M. Padden:

On motion of the said defendant,

It Is Ordered that the report of proceedings submitted by defendant is hereby approved, signed and ordered filed

herein and that the said original report of proceedings in lieu of a copy may be inserted in the transcript of record of this cause for all purposes of review of this cause by the Supreme and Appellate Courts of this state.

Report of Proceedings—Filed July 8, 1935

Stenographic report of the testimony taken and the proceedings had on the trial of the above entitled cause, before the Honorable Frank M. Padden, one of the Judges of said court, commencing on the 19th day of March, A. D. 1935.

Present:

Mr. David Lefkovits, special assistant city prosecutor, on behalf of the City of Chicago.

Messrs. Babcock, Gilruth, Beck & McConnell, by Mr. Thomas C. McConnell and Mr. Owen Rall, on behalf of defendant.

(Whereupon the City of Chicago, to maintain the issues on its behalf, introduced the following evidence, to wit:)

The Court: City of Chicago v. Marcus Hauge.

Mr. Lefkovits: This is also a violation of Section 2947 of the Municipal Code of Chicago and the penalty thereunder is provided in Section 2957; that they had no public weighmaster's certificate attached.

The Court: Proceed.

[fol. 15] Robert Hickey, a witness on behalf of the City of Chicago, being first duly sworn, testified as follows:

Direct examination:

By Mr. Lefkovits:

My name is Robert Hickey, and I am employed in the city sealer's office in the capacity of deputy inspector, weights and measures. I have been with the city sealer for quite a few years.

On March 4, 1935, I did have occasion to follow a truck driven by Marcus Hauge. We followed this load of coal from Ogden and Cicero to 2005 West Cermak Road, where Mr. Hauge of Morris delivered one ton of egg lump coal. I asked him for the delivery certificate.

I did not have any conversation with him before he unloaded his coal. I had a conversation after he started to unload his coal. I asked him for his ticket and he showed that he had seals of the Morris Mining Company on his ticket. He gave me his ticket at the time.

City Exhibit 1, which I have inspected, does not have on it a public weighmaster's seal of the City of Chicago. There is a seal on there of the Morris Mining Company. I asked him whether or not he had a public weighmaster's seal of any weighmaster in the City of Chicago, and he said no. That is about all we talked about.

I talked to the purchaser of the coal. It was in the presence of Mr. Hauge. I just asked him if he bought the coal from this Mr. Hauge and he said yes; he had been buying coal from time to time.

[fol. 16] I observed whether or not payment was made at that time for the coal; a cash payment. I believe the customer's name is on the report. Let me see if I am familiar with it. Mr. Tresca.

I saw Mr. Tresca pay Mr. Hauge for the coal at that time. All this happened in the City of Chicago, County of Cook and State of Illinois.

Cross-examination.

By Mr. McConnell:

As near as I can come to the exact words that were used by the purchaser in that conversation, I asked him if he had been buying coal from this man and he said yes. That is about all. I just explained the situation to the customer, just what had happened.

(Witness excused.)

HAROLD OLSON, a witness on behalf of the City of Chicago, being first duly sworn, testified as follows:

Direct examination:

By Mr. Lefkovits:

My name is Harold Olson. I am employed by the Chicago Better Business Bureau.

On March 4, 1935, I was with Mr. Hickey. I followed a truck driven by Marcus Hauge. I could not recall any conversation that took place just as Hauge was unloading that particular coal. I cannot say that I do remember any of it at all.

I was present when the delivery ticket was turned over. I asked Mr. Hauge some questions about a weighmaster's certificate at that time. I asked him whether he had a [fol. 17] weighmaster's seal and he showed me the certificate. Also asked if he had any other weighmaster's certificate of the City of Chicago. He said he did not. All this conversation took place in the City of Chicago.

Cross-examination.

By Mr. McConnell:

I am employed by the Chicago Better Business Bureau. The occasion for my being present at that time was that myself and one or two other employees of our bureau had been working with the city sealer's office, that is, men of the city sealer's office, or deputies. My superior, Mr. E. R. Peterson, requested me to do that. He is not connected with the Retail Coal Merchants Association in any way. I do not know who asked the Better Business Bureau to interest t! mselves in this matter.

Mr. Lefkovits: May I make an objection to this line of testimony?

The Court: Sustained. That is going too far.

Mr. McConnell: That is all.

(Witness excused.)

[fol. 18] (Whereupon, without objection, the document referred to marked City Exhibit 1 was offered and received in evidence and is in words and figures following:)

CITY EXHIBIT 1

Morris Coal & Mining Co.

Jct. U. S. No. 6 and Ill. No. 47

Morris, Illinois

Phone: Morris 80

Morroco Coal

Mined the Day You Get It

Direct From Mine to You—Any Quantity—Any Place—By Truck

Morris, Ill., 3/4 1935.

Name: W. Burgess.
Street .....
City .....

Kind ..Lump ..... @ ....per ton....
..... @ ....per ton....
Gross ..13420 ..... lbs. .....
Tare ..5420 ..... lbs. .....
Net ..8000 ..... lbs. .....
Tax Expense .....
Labor .....

Time ..... Total .....
Remarks .....
Driver ..Hauge..... Salesman .....
Weighed by..NHB..... Public Weighmaster

This Is To Certify That the herein described material was weighed by a Public Weighmaster, and the seal at-[fol. 19] tached hereto is a recognized authority of accuracy as prescribed by Section 4204 of the Chicago Municipal Code of 1922, as amended Dec. 16, 1925 and Jan. 21, 1926.

Terms Cash on Delivery

All Claims Must Be Reported to Office Within 48 Hours

Ticket Number 2323-2153-2082.
No. 19311. Rec'd by —— ——.

(End of Exhibit.)

FRANK A. LANSER, a witness on behalf of the City of Chicago, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lefkovits:

My name is Frank A. Lanser. I am employed by the City of Chicago, Department of Weights and Measures, in the capacity of chief deputy inspector. I have charge of the records of all of the registered public weighmasters. I did have occasion to look up my records as to whether or not the Morris Coal Mining Company is a registered licensed public weighmaster in the City of Chicago, and they have no such license. They were not so licensed during the year 1935.

[fol. 20] Cross examination.

By Mr. McConnell:

I had no occasion to look up whether they were licensed during the year 1934. I looked up for the year 1935 and found they have no license for the year 1935.

Q. Do you know of your own knowledge that they were licensed in the year 1934?

Mr. Lefkovits: That is objected to as immaterial.

The Court: Sustained. Objection sustained. It is immaterial.

Mr. McConnell: You were formerly with the Better Business Bureau, weren't you?

Mr. Lefkovits: Objected to.

The Court: Objection sustained.

Mr. McConnell: That is all.

(Witness excused.)

(The City of Chicago here rested its case.)

(Whereupon the defendant, to maintain the issues on his behalf, introduced the following evidence, to wit:)

MARCUS HAUGE, the defendant, a witness on his own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. McConnell:

My name is Marcus Hauge. I live at Morris, Illinois. My business is hauling coal for customers here in Chicago. [fol. 21] Referring to a certain conversation which has been testified about here, I cannot quite recall the name of the purchaser of this coal. It is a foreign name. It is hard to remember.

I don't remember whether I hauled for him or not before this time that has been testified about. I hauled for other people in Chicago. Not that I remember, did he ever talk to me about ordering any coal. I could not just really say whether he had himself talked to me at any time about ordering any coal. I might have seen him before that time; I don't remember.

I do not have any office any place. I got this particular load of coal in Morris, Illinois. I got orders there to load my truck at that time, sent there through the mine. I was not receiving any commission on the sale of any coal; only from the customer that paid me for hauling coal.

I received from the customer in the way of money $2.50 on a single ton and $2.00 on a two ton lot. That money goes to me. That money—that charge—was my money for my time in hauling the coal. I own the truck that I drive. I did not buy any coal that day myself. I get the coal there at the mine (Morris Coal and Mining Company) and I pay them for the coal.

I don't remember whether the customer here in this case said in my presence that day that he had bought the coal from me. I heard the witnesses testify here. I don't remember now any such conversation as that.

Q. Did you, as a matter of fact, sell any coal to this customer that day?

A. Yes, I delivered coal there.

[fol. 22] Q. Did you sell any? Was it your coal?

A. Yes, it was my coal.

Q. Did you buy the coal from the Morris Coal and Mining Company?

Mr. Lefkovits: He said he did. Now counsel is going over the same questions.

The Witness: I get the orders from the mine and I haul it up to the customer.

Mr. McConnell: Who are you working for? Who are you employed by in hauling that coal?

The Witness: I am employed by the customer.

The customer pays my charge. I weighed this coal before I left Morris.

Q. Just tell the Court how that coal was weighed.

A. I had a split load. For instance, if I have a ton on to be unloaded first, I weigh up the ton and load it up with each separate lot, one ton, two tons and three tons.

I weigh empty first, and then the load.

I was not weighed by the city inspector. They did not weigh me. I asked if they wanted to weigh it and they said no, they knew our weights were right and they didn't want to bother us with it. The sealer who stopped me said that.

Q. The money that you received from this customer, how much of that money did you have as your own?

Mr. Lefkovits: That is objected to.

The Court: Overruled.

The Witness: $2.50.

That was for trucking, for my work.

[fol. 23] Cross examination.

By Mr. Lefkovits:

I could not exactly say that I knew Mr. Tresca, the purchaser, before this time.

There was an order sent down to deliver coal to him. I don't remember who sent the order. It is sent down to the mine. I imagine Mr. Tresca sent the order down to the mine. This customer sent the order down to the mine.

Q. And then you went to the mine and they said there was an order there, is that right, for coal?

A. That is the way I usually get my orders, being sent down there.

I paid for the coal at the mine. The customer pays me when I deliver it.

Q. First you pay for the coal at the mine; it is weighed, and then you pay them. Isn't that correct?

The Court: Do you pay for the coal before it is taken away?

The Witness: I pay them afterwards.

I have an account with the mine.

Mr. Lefkovits: In this particular instance, on direct examination you said you paid for the coal at the time they weighed it in at the mine, is that right?

The Witness: No, not always.

Q. I am talking about this particular delivery?

A. No.

I have a credit account with the coal company. I do not merely add my trucking bill on to the price of the coal when I sell it to the customer. I sell the coal and then they pay me for the hauling. The customer pays me for the hauling. [fol. 24] The price of our coal in question is $6.00 for lump and egg, except in single tons; then we charge fifty cents extra for single ton deliveries.

Q. How much do you pay for it at the mine? $2.50?

A. $4.00.

Q. $4.00 at the mine?

A. Yes.

I don't remember what individual at the mine called my attention to this order. I don't really recall his name. That ticket was given me by a fellow who has an office here, who sends it down. The name of the company or agency here is Burgess. Burgess is connected with himself. He takes the orders from the customers here in Chicago. I don't remember whether he did in this particular case.

Q. Don't you know who gave you this ticket?

A. It was sent down to the mine.

I could not say who sent it down. Nobody at the mine gave me this ticket and told me to deliver it, just left it there for me. They didn't say where it came from.

The name on here is filled out to Burgess; Burgess' name is on it.

Burgess has got it made out to Tresca; not this particular bill I got at the mine, but the one he has got is billed out to the customer.

This ticket is made out for a full load. I did not deliver a full load to this particular party. There were other customers, either two or three on the same load. I could not remember the name of who else I delivered to besides Tresca at that time. I can't remember now where I delivered the other two loads on that same truck. I delivered two tons [fol. 25] to one and one ton to another, four tons altogether. They paid me.

All of this coal was not just dumped onto the truck. They had dividing boards in for split loads. I had three dividing boards at that time. I can't recall now who I delivered the other two loads to. The customer paid me for these deliveries. It is not always the fact that I never heard of the customer before, and that I was just told to go over there through Burgess. In this particular instance, I don't remember.

Re-direct examination.

By Mr. McConnell:

I don't have any account in my own name with the Morris Coal and Mining Company.

The Court: How do you pay for the coal then? Do you pay them cash or do you have an account, or do you settle up at the end of the month, or what do you do?

The Witness: Usually through Burgess' office. I pay Burgess for the coal. The customer pays me for hauling it.

Burgess does not pay a certain price to me for the coal. I know what the market price of coal is.

Mr. McConnell: You do not yourself buy any coal, do you?

The Witness: No, I do not buy the coal.

What I do is to go down there every morning at the mine and wait for a- order for a load, and I get those orders there at the mine. I don't pay any money then for the coal. The only money I ever pay at any time is after the delivery and after I have received this money from the customer. That money does not belong to me.

[fol. 26] The Court: You are working for this company?

The Witness: No, I work for the customer.

The Court: That is enough. That is clear.

Recross examination.

By Mr. Lefkovits:

I pay Burgess for the coal afterwards. He has an office here in Chicago. The name on his office door is Tropic-Air Coal Company.

Mr. McConnell: The only money you get at any time is for hauling the coal?

The Witness: Yes.

(Witness excused.)

RALPH C. MCELVAIN, a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. McConnell:

My name is Ralph C. McElvain. I live at Morris, Illinois. Before that I lived in Evanston, Illinois. I lived in another place downstate; I was born in Auburn, Illinois. Most of my life my business has been coal mining. I had run strip mines before I had this Morris Coal and Mining Comp[any]. We ran in southern Illinois and here.

My present business is mining coal and selling it. I am president of the Morris Coal and Mining Company that has its principal place of business at Morris. Their business in Morris is strip mining and selling coal.

Q. Can you just tell the Court how the coal is sold? You have heard the testimony of the witnesses here. Will you [fol. 27] just state to the Court how these transactions are handled on the records of your company in Morris?

Mr. Lefkovits: I object.

The Court: He may answer.

The Witness: We sell coal to the customer. We have trucks around there that deliver the coal and collect for it. They collect the money for the coal, as well as for their own hauling. The customer pays them for hauling and also pays them for the coal, and they pay us, turn the money

back in to us when they get back. Then we also have offices which are brokers for us.

We always considered the customer employs these truckers. We certainly do not employ them. We do not pay them any wage or salary of any kind whatever. They come from all over the county. They own their own trucks.

The Court: Do you get orders that you turn over to them or do they bring their own orders?

The Witness: Some of the offices send orders down and we get orders too.

When we do get orders we turn them over to the trucker and he delivers the coal; that is, any trucker that might come along that does business with us.

Mr. McConnell: And this trucker that takes that coal, he keeps all of the charge for delivering the coal, is that right?

The Witness: Yes.

We don't keep books of any trucker whatever, in no way, shape or form. We never see a nickel of the money that [fol. 28] he makes. As to whether he pays cash ordinarily at the mine—he does not pay anything. We give him an order to go out. Some customer gives us an order and we turn it over to him, to get so many tons of coal. He gets the coal and delivers it and brings the money back, everything except his hauling from the mine. We do make a definite price at the mine for the coal.

That coal is sold, I would say, f. o. b. the mine. That is the way we handle it.

We have had a city seal from the City of Chicago. At one time we had it. They failed to renew it this year. We made application.

We have a scale down there at the mine at Morris. That scale is inspected by the Bureau of Weights and Standards of the State of Illinois. It has been inspected recently; it has been inspected this year. They come around every couple of months or so, something like that.

When I say that we weigh these trucks, I mean that our procedure is to weigh it empty. We put their name and their weight down in a book. If the order calls for a straight load, as we call it, a four or five ton load, they put it on and weigh up again. We always allow plenty, so nobody is going to get caught short weighting. We put overweights on.

If instead of a straight load they should have maybe three tons and a single ton, they put on their three tons and weigh it on and then put on their single ton and weigh it up, and they get a ticket for each one.

Reweighing this coal in the City of Chicago would mean in the way of price on this particular coal that it would probably cost the customer from fifty to seventy-five cents, [fol. 29] and in some cases a dollar more per ton. This is not exactly the cost of weighing, because, if we could get a seal in here, we would have to establish a yard, which would run the cost up needlessly.

I mean that we would have to take the coal off the load; it is the handling charge of the coal that I am talking about.

Q. Is there any way you could weigh the trucks empty and then weigh them loaded?

A. We do it at the mines at all times, every load.

Q. I mean here in Chicago, without advancing the price of the coal.

A. No, sir. In some cases, in a few instances they might, but in the majority of them you might say it would be impossible.

We have had no complaints from our customers as to short weight.

Cross-examination.

By Mr. Lefkovits:

We do not have any office in Chicago. I know Mr. Burgess. Mr. Burgess has an office here. He does business under only one trade name, Northern Coal Company, and he has a trade name on his coal, which he calls Tropic-Air coal. The previous witness was in error. He got the trade name mixed up with his company.

Under that trade name Mr. Burgess advertises here in Chicago for the sale of that coal and he procures some of these potential customers and he sends the orders down to us at the mine.

We fulfill the order as sent to us by Mr. Burgess. I don't know whether you would call Mr. Burgess our customer or not. He is a kind of a jobber for us, yes. The names [fol. 30] of the people he sends in are right on the ticket. We do not know anything about the customers he sends in.

Sure we are concerned about the customer. We are not concerned so far as their credit rating is concerned; we get our money anyway. It is cash. We don't get the cash from Mr. Burgess. The truck driver gets it from the customer. He gives it to us or to Mr. Burgess, according to which is handier. In some cases he gives it to Mr. Burgess and Mr. Burgess gives it to us. In other cases he gives it right direct to us. Supposing a payment is made direct to us by the trucker, we make a remittance to Mr. Burgess. He gets a jobber's price.

Examining the delivery ticket (City's Exhibit 1) in this particular case, the delivery was not made to Mr. Burgess. It was made on Mr. Burgess' order. We billed Mr. Burgess for that. We charged this to Mr. Burgess, evidently. The customer paid for it. In this particular instance Mr. Burgess was not our customer; he was our jobber in the deal.

The Court: Oh, what is the difference? Of course he is the jobber. That is perfectly apparent.

(Witness excused.)

(After an argument in chambers, the following proceedings were had in open court:)

The Court: The only question is the amount of the fine.
Mr. McConnell: We want to make an offer for the record.
The Court: What is the offer?
Mr. McConnell: Mr. Rall will make it.

[fol. 31] MOTION FOR PROPOSITION OF LAW

Mr. Rall: In each of the cases the respective defendants ask the Court to hold the following to be the law of the case:

The burden of proof is on the plaintiff, City of Chicago, to show that the sale of the coal involved in the proceedings to the person or persons to whom delivery of the same was being made, took place within the corporate limits of the City of Chicago, and if the Court finds from the evidence that the said sale of said coal took place outside of the corporate limits of the City of Chicago, then the finding of the Court should be for the defendant.

We ask the Court to hold that proposition in each of the cases.

The Court: The Court holds that the sales are made in the City of Chicago.

The Court: The Court will hold that your objection is sustained, if you want it written out.

Mr. Rall: All right. For the purpose of the record then, we may submit these propositions of law tomorrow.

The Court: I will wait until the morning.

Mr. Rall: It is further the contention that if construed to prevent the acts here involved, the ordinance on weights and measures, the violation of which is charged, is a violation of Article II, Section 2, relating in due process of law, of the Illinois State Constitution, and Section 1 of the Fourteenth Amendment to the Constitution of the United States and that said ordinance so construed goes beyond the enabling act under which the city was authorized to pass an ordinance dealing with weights and measures.

[fol. 32] The Court: All right, come in at ten o'clock.

(Whereupon an adjournment was taken until 10:00 o'clock A. M. of the following day.)

(The court met pursuant to adjournment with the same attorneys present as before.)

COLLOQUY

The Court: Did you want to make any remarks before I enter the order?

Mr. Lefkovits: In regard to these cases?

The Court: Yes.

Mr. Lefkovits: I do, if I may. The ordinance provides for a minimum fine of $25 and a maximum fine of $200 on this particular charge. Now, the City is making a very earnest attempt at this time to rid itself of a very troublesome proposition. Because of its being the law, it is necessary that they have a public weighmaster's certificate. That is the only way we can protect the public from being bilked. We can only look to some reliable individual who is bonded to protect the user of coal in Chicago.

We have tried other cases against mining companies and truckers. Counsel has appeared for them in other cases.

He knows our situation, and he knows what happened in those other cases. This is important because these truckers are not giving us this litigation; it is the mining company which is giving us this litigation. They know they are violating the law, because they are going in the Superior Court and asking for an injunction, and making jury demands and coming in here on changes of venue.

I feel, although we do not want the maximum fine in these cases, that there ought to be a fine which will emphasize the [fol. 33] fact that we mean to enforce the ordinance and rid ourselves of this troublesome proposition. I want to be as lenient as I can. Eventually the mining company will pay for it; it is not the trucker who will pay. It is recommended from the department for me to be as lenient as I can. There certainly ought to be a fine of $50 in each one of these cases. I think that is eminently fair.

Mr. McConnell: If the Court please, the gentlemen who are tried here are truckers receiving coal which has been weighed over state scales. There is no question here of there being short weights. In fact, they are overweight. The testimony in one case was he was 400 pounds overweight.

The Court: Four hundred and fifty.

Mr. McConnell: Four hundred and fifty pounds overweight. As to counsel's remarks about the coal company, while they are irrelevant, I want to say this: that this company is a legitimate company, which is engaged in a fight for its existence here, and it has a perfect right under the Constitution to raise the questions which have been raised. These defendants have a perfect right to protect their legal rights in court and have their day in court; and certainly litigants should not be penalized in any way for taking the rights which the law allows. Now, there is no malice, and there is no question of defrauding anybody here. It is a technical violation of this Act. The cases will be tested out, as it seems to me that we have a right to make the test in these individual cases, and I do not see why anything more than the minimum fine should be assessed against these defendants.

The Court: In the case of Hauge, it will be $75; in the others it will be $25.

[fol. 34] Mr. Rall: Will your Honor fix the amount of the appeal bond?

The Court: All right. Bond within five days. In the meantime you can serve notice of appeal and file your bond. I will fix the bond. I will stay the execution until Tuesday. That merely gives you an opportunity to appeal.

Make the bond $200 in each case; $200 ought to be sufficient.

Mr. Lefkovits: $200 is sufficient.

Mr. Rall: Will your Honor certify that there is a municipal ordinance involved and it requires an appeal to the Supreme Court? It is our contention that an ordinance requiring delivery alone in this city and incurring the penalties of tnis court is invalid, because it therefore violates the Constitution; also because it is beyond the power of the city.

Mr. Lefkovits: It is my understanding that his Honor is not ruling on that particular set of facts; his Honor is ruling on the fact that there was a consummation of sale in the City of Chicago.

Mr. Rall: That is the purpose, to get the Court's opinion of the law.

The Court: I do not think the Supreme Court will do any different if they agree the sale was made in the City of Chicago. It will not consider a hypothetical question. If the evidence showed that the sales were made outside of the city then that would raise that question which you have raised. Now, Mr. McElvain got on the stand and said that this man Burgess was a broker; he said he was a jobber, broker; "jobber" was the term he used; was here in Chicago——

Mr. Lefkovits: Had his offices here.

[fol. 35] The Court: And they got their orders from Burgess; that is true of all of them here. The testimony could have shown the sales were made down there, but there is no indication that anybody that bought coal here knew anything about that situation down there. I do not see how I can certify something which does no appear in the evidence.

Mr. McConnell: If the Court please, that is the question.

The Court: You remember I interrupted you during one of the cases yesterday, and said you were shadow boxing over something when the evidence seemed to show the sales were made here.

Mr. McConnell: I remember that. Here is the point: We haven't argued this before your Honor, but it appeared here in the evidence that the trucking charge was paid by the customer and that delivery tickets were made in the name of the purchaser down at Morris. Now, the Uniform Sales Act provides that where the goods are appropriated the title passes. That is the first time the coal could have been appropriated; there couldn't have been a sale here, whether by Burgess or anyone else, in Chicago. Why? Because there are no goods here in Chicago for anybody to appropriate; the goods were appropriated in Morris when they were placed in the truck of the trucker. It has been our contention when those goods have been appropriated in that manner, title passes to the buyer, he paid the charges, and the sale was consummated in Morris.

The Court: There is nothing indicating there was any privity of contact between the coal company and the customer; the coal company merely delivered coal to the truck [fol. 36] driver on somebody else's order. They looked to Burgess or the driver for their money. Nobody else had anything to do with it. They had no account with any customer.

Mr. Lefkovits: As a matter of fact, most of these were on the order of Burgess; and there is not a scintilla of evidence to show where any purchaser said they dealt with the mine; not one witness testified to that effect.

The Court: There should have been evidence here to show that is so; that the sales were made outside of the city:

Mr. Lefkovits: That is true; that would have raised another question.

Mr. McConnell: Suppose the Appellate Court finds on these facts that there was a sale in Morris, what then?

The Court: There is nothing we can do about that.

Mr. McConnell: Then we have a further question, your Honor, as to the validity of the ordinance and the constitutionality of the ordinance; which really should be passed upon by the Supreme Court.

* * * * * * *

Mr. Lefkovits: The constitutionality of this has been passed on; they know it is constitutional.

The Court: It was passed on in the 312th Illinois.

Mr. Rall: The big reason they say it was constitutional was the fact that they permitted the dealer of coal himself to be a public weighmaster. Now, if the City permitted us to be a public weighmaster, as we had been before, then, of course, there will be no complaint.

[fol. 37] The Court: I see your point. The difficulty is, that that cannot be reached in this case because the coal company is not a party in any sense in this case.

Mr. Rall: That is true, but when the coal company goes over into the Superior Court, counsel comes back here and offers that as some reason for punishing somebody else here.

The Court: I do not think that is so. It did not influence me any.

Mr. Rall: It did not influence your Honor, I can see that.

Mr. McConnell: May I say this, if the Court please? This question of the constitutionality of this ordinance is directly challenged here. That is, we do here challenge the constitutionality of that ordinance. Of course, if the ordinance is not constitutional, this proceeding must fail.

The Court: Get me the 312th again. Let's look at it and see.

Mr. McConnell: My point is this, if the Court please: Whenever these questions of constitutionality come before the Supreme Court, or an ordinance comes before the Court, the Court looks at the ordinance to see if it is a reasonable restriction.

The Court: Wait, I will look this over and see. This feature of it, however, has been passed on. Now, the question of whether or not the sale was made outside of the City of Chicago has not been passed with relation to the ordinance.

Mr. McConnell: No, at no time.

Mr. Rall: Apparently it has never been passed on.

[fol. 38] The Court: Never been passed on?

Mr. Rall: No, there has been no decision on the question which we are raising, and raise here, whether or not the City of Chicago has a right to stop a man at the city limits and see if you have a certificate of public weighmaster, even though he has a certificate from scales inspected under the state law.

Mr. Lefkovits: That is not so here.

The Court: There is no evidence that that is true; there is no evidence in the record that the scales on which this coal was weighed complied with the state law.

Mr. McConnell: Oh, yes.

Mr. Lefkovits: No.

The Court: Where is that evidence in the record?

Mr. McConnell: Yes, that is in the record. McElvain testified that the scales were inspected, had been inspected this year, and certified by the inspector of public weights and standards, State of Illinois.

The Court: Yes, I guess that is right.

Mr. McConnell: Over which this coal is weighed. That testimony is in each of these cases by stipulation.

* * * * * * *

Mr. McConnell: Now, in view of that fact, and the state statute authorizes it, where the delivery tickets shall be available to the state inspector, and this is a state-inspected scale, we have the question here as to whether or not this ordinance is constitutional.

[fol. 39] Mr. Lefkovits: But the state law also delegates to cities the right to inspect this coal.

The Court: I will tell you what you may do if you want; you may write up that statement. You do that and I will consider it.

* * * * * * *

The Court: Let me see that 312th. What is that case?

Mr. Rall: Wisconsin Lime and Cement.

Mr. McConnell: The Supreme Court cannot anticipate every point that may be raised; they may change their mind on a different point.

Mr. Lefkovits: It covers that whole point, the reasonableness of the act.

Mr. McConnell: On a different set of facts it makes a difference. They had a coal yard here; they didn't have a state weighmaster's certificate in that case.

At the request of the defendant, the trial Judge signed and ordered filed in this cause the following certificate:

(The report of proceedings here contains the certificate printed above, Rec. p. 13, which is therefore not repeated here.)

The defendant, at the commencement of the further hearing on March 20, 1935, and before the entry of Judgment herein submitted a written proposition of law to the Court and asked the Court to mark it "Held", but the Court refused to do so and instead marked it "Refused".

Said proposition of law was and is as follows:

(The report of proceedings here contains the proposition of law, marked "Refused, F. M. Padden, Judge," printed above, Rec. p. 15, which is therefore not repeated here.)

[fol. 40] Whereupon, the Court, over the objection of the defendant, entered a judgment in favor of the plaintiff, City of Chicago, and against the said defendant, as shown by the record in this cause.

Forasmuch as the above matters and things do not fully appear of record, the defendant tenders this report of proceedings in said cause and prays that it may be signed and sealed by the Judge of said court and filed among the records in this cause.

Accordingly, I hereby certify that the above is a full, true and complete stenographic report of all of the evidence, oral and documentary, offered or received in the above entitled cause and of the proceedings had and rulings made in said cause.

Without prejudice to the right of either party hereto to ask the Supreme Court of Illinois to take judicial notice of the ordinances of the City of Chicago pursuant to "An Act in relation to judicial notice," in force July 1, 1929, as amended, the undersigned hereby certifies that on the trial of the above entitled cause the Municipal Court of Chicago took judicial notice of the due passage and publication of the following ordinances of the City of Chicago relating to the Department of Weights and Measures, to weights and measures, to dealers in coal, etc., and to public weighmasters, the sections being those of the Revised Chicago Code of 1931:

ORDINANCES OF CITY OF CHICAGO

Department of Weights and Measures

525. Department created.) There is hereby created and established an executive branch of the city government to

be known as the department of weights and measures, having jurisdiction over the inspection and examination of all [fol. 41] weights, measures, scale beams, patent balances, steelyards and other instruments used for weighing and measuring in the city.

526. Inspector of weights and measures—appointment.) There is hereby created the office of inspector of weights and measures; the said inspector shall be the head of the department of weights and measures, and shall have supervision over it. He shall be appointed by the mayor, by and with the advice and consent of the city council.

Weights and Measures

2939. Weight to be verified on demand of purchaser.) Whenever the purchaser or intending purchaser, or the inspector of weights and measures or any of his deputies, shall make demand that the weight of the load of such crushed stone, bank sand, torpedo sand or gravel be verified, it shall thereupon become the duty of the person, firm or corporation delivering such material to convey the same to some public scale selected by the inspector of weights and measures of the city of Chicago or any of his deputies, or the purchaser or intending purchaser of the material being delivered, in the particular locality where the material is to be delivered, or to any private scale in the particular locality where the owner thereof shall consent to such use, and permit the weighing of the material together with the equipment, for the purpose of ascertaining the gross weight thereof, and shall, after the delivery of such material, return forthwith with the conveyance and equipment used in the delivery of such material to the same scale and permit the weighing of said conveyance and equipment for the purpose of verifying the net weight of the material, as shown by the said memorandum; provided, however, that if such person, firm or corporation so delivering the said [fol. 42] material requests the privilege of reweighing said material on another and different scale than that selected by the inspector of weights and measures of the city of Chicago or any of his deputies, or the purchaser or intending purchaser, said inspector of weights and measures or his deputy, or the purchaser or intending purchaser to whom delivery is to be made, shall permit such weighing on some other scale in the particular locality.

Regulations as to Weights and Measures

2947. Commodities sold in load lots.) Every load of any commodity, produce or other article or articles of merchandise sold in load lots by weight, delivered by wagon, truck or other vehicle within the city, shall be weighed by a public weighmaster; a certificate of weight for each such load, issued by such public weighmaster, shall be delivered by the driver or person in charge of the wagon, truck, or other vehicle used in the delivery, to the purchaser or consignee of such load, or to his or their agent at the time of the delivery and before any of the commodity, produce or other article or articles of merchandise is removed from the vehicle, or such certificates shall be delivered to the inspector of weights and measures, or any of his deputies upon his or their demand. When delivery is made, in case no person is present to receive such commodity, produce or other article or articles of merchandise, and if the purchaser or consignee, or his or their agent, cannot be located, then the memorandum or certificate of weight hereinbefore provided for shall be posted conspicuously at the place of delivery before any of the commodity, produce or other article or articles of merchandise is removed from the vehicle.

2950. Conditions of re-weighing where weighmaster weighs own commodities.) In any case where a person, [fol. 43] firm or corporation as a public weighmaster has weighed any load lot of any commodity, produce, article or articles of merchandise sold in load lots by weight which was sold or delivered by such person, firm or corporation or by any person directly or indirectly interested with such person, firm or corporation in the operation of its public scale, it shall be the duty of such person, firm or corporation delivering such load and of the driver or person in charge of the vehicle used in the delivery thereof, upon the request of the inspector of weights and measures or of any of his deputies or the consignee or purchaser, to convey such load to some scale selected by the inspector of weights and measures or such deputy or such consignee or purchaser and permit the weighing of the gross weight of such load, and, after the delivery of such load, to return forthwith with the vehicle and equipment used in the delivery thereof to the same scale and permit the ascertaining of the tare weight for the purpose of verifying the net weight of such

load as shown by the weight certificate, but only on the following conditions:

1. That the scale thus selected shall be some public or private scale which has been duly inspected and sealed by the inspector of weights and measures in the particular locality where the delivery is to be made, or the demand for reweighing is made, and in no case farther than one mile therefrom unless there is no adequate scale available for the purpose within one mile.

2. That if such person, firm or corporation delivering such load or such driver or other person in charge of the vehicle used in the delivery thereof so demands, such load, in addition to being weighed on the scale thus selected as aforesaid, shall be weighed on the scale of the public weighmaster where it was originally weighed, or on any scale, [fol. 44] public or private, which has been duly inspected and sealed by the inspector of weights and measures other than that so selected, in the particular locality where the request is to be made and in no case farther than one mile therefrom.

2951. Conditions for re-weighing of commodities not owned by the weighmaster.) In any case where the person, firm or corporation selling or delivering any load lot of any commodity, produce, article or articles of merchandise sold in load lots by weight has not as a public weighmaster weighed such load lot, and has caused such load lot to be weighed by another person, firm or corporation licensed as a public weighmaster, and is not interested directly or indirectly with such public weighmaster in the operation of such public weighmaster's scale or scales, it shall be the duty of the person, firm or corporation delivering such load and of the driver or person in charge of the vehicle used in the delivery thereof, upon the request of the purchaser or consignee, or the inspector of weights and measures or of any of his deputies, to convey such load to some scale selected by such purchaser or consignee, or by the inspector of weights and measures or such deputy, and permit the weighing of the gross weight of such load, and after the delivery of such load, to return forthwith with the vehicle and equipment used in the delivery thereof to the same scale and permit the ascertaining of the tare weight for the purpose of verifying the net weight of such

load as shown by the weight certificate but only on the following conditions:

1. That the inspector of weights and measures or the deputy, or purchaser, or consignee making such request shall have followed such load or shall have kept it in view from the location of the scale where such load was originally weighed by the public weighmaster to the point where such request is made.

[fol. 45] 2. That the scale thus selected shall be some public or private scale which has been duly inspected and sealed by the inspector of weights and measures, and shall be located in the vicinity of the point where such request is made and in no case farther than one mile therefrom unless there is no adequate scale available for the purpose within one mile.

3. That if such person, firm or corporation delivering such load, or such driver or other person in charge of the vehicle used in the delivery thereof, so demands, such load, in lieu of being weighed on the scale thus selected as aforesaid, shall be weighed on the scale of the public weighmaster where it was originally weighed or on any scale, public or private, which has been duly inspected and sealed by the inspector of weights and measures, other than that so selected, located in the vicinity of the point where such request is made and in no case farther than one mile therefrom.

2953. Fine for delivery of false weight certificates, etc.) Any person, firm or corporation selling and delivering or attempting to deliver any load lot of any commodity, produce or other article or articles of merchandise sold in load lot by weight, delivered by wagon, truck or other vehicle within the city, of a quantity less than that called for by the delivery ticket, or any public weighmaster or deputy who shall provide the driver or person in charge of the vehicle used in the delivery thereof, or the person making or attempting to make delivery thereof, with a certificate, memorandum or weight ticket which does not correctly state the information required to be given by virtue of section 3623, or with a certificate or memorandum which does not give the result of the actual weighing of such load lot, and any driver or person in charge of such delivery

who shall fail, neglect or refuse to deliver to the inspector [fol. 46] of weights and measures or any of his deputies upon demand, the aforesaid public weighmaster's certificate before such load or any part thereof is removed from the vehicle, or who shall refuse to comply with their or his request to reweigh the same in order that the weights stated in such certificate may be verified, shall be fined not less than seventy-five dollars nor more than two hundred dollars for each such offense; the penalty provided in this section shall be in addition to any penalty that may be imposed under sections 3615 or 3616. Provided, that whenever the re-weighing is done on a scale other than the scale on which the weighing was originally done a variance of one per cent or less in the net weight of a load lot between the net weight as set forth in the public weighmaster's certificate and the net weight as ascertained by re-weighing such load shall not be considered a violation of this ordinance.

2954. Meaning of "net weight.") When any commodity, produce, article or articles is or are sold subject to public weighmaster's weights, the net weight shown in the weight certificate issued by such public weighmaster shall be taken to be the true net weight of the same, subject to the right of re-weighing as herein provided. Net weight, within the meaning of this article, shall be the actual weight of the commodity, produce, article or articles excluding the weight of the vehicle, if any, in which it is loaded, and excluding the weight of the horses and driver of such vehicle or either of them, as the case may be, if such horses and driver, or either of them, be weighed as part of the tare weight.

"2955. Weighmaster can weigh own commodities.) Nothing contained in this article shall be construed to prevent any person, firm or corporation engaged in the business of selling any commodity, produce or article of mer- [fol. 47] chandise which is ordinarily delivered by wagon, truck or other vehicle, from becoming public weighmaster and appointing deputy weighmasters to weigh the commodity, produce or article of merchandise being sold and delivered by such person, firm or corporation; and any weight certificate issued by such person, firm or corporation, or the deputies appointed by same, covering commodities sold by such person, firm or corporation, shall be

of the same effect as the weight certificate issued by any other public weighmaster.

2956. Ice excluded.) Ice sold in load lots by weight is exempted from all the provisions in this article.

2957. Penalty. Any person, firm or corporation, including any weighmaster or deputy weighmaster, that shall violate any of the provisions of this article, shall, when no other specific penalty is herein provided, be fined not less than five dollars nor more than two hundred dollars for each offense. The inspector of weights and measures shall enforce the provisions of this article.

Coal, Charcoal and Coke

3341. Definitions.) Whenever used in this article:

(a) the words "solid fuel" shall mean any anthracite, semi-anthracite, bituminous, semi-bituminous or lignite coal, briquettes, boulets, coke, gashouse coke, petroleum coke, petroleum carbon, or any other manufactured or patented fuel not sold by liquid or metered measure;

(b) the words "hundred weight" shall mean one hundred pounds avoirdupois and

(c) the word "ton" shall mean twenty hundred weight. (As amended May 18, 1934.)

3342. Delivery ticket—requirements—verifying weight.) [fol. 48] Any person, firm or corporation engaged in the business of selling, or selling and delivering, of solid fuel in the city shall provide the driver of the wagon, truck, or other conveyance with a separate delivery ticket for each kind, grade and size of solid fuel contained on the wagon, truck, or other conveyance bearing the name of the person, firm or corporation selling such solid fuel, showing the gross weight, the tare and the net weight of each kind, grade or size of solid fuel, and the name and address of the purchaser of said solid fuel, or the person, firm or corporation to whom same is to be delivered, which said delivery ticket or tickets shall be delivered by the driver in charge of the wagon, truck, or other conveyance to each purchaser, or his agent or representative, or to the person to whom delivery is to be made, at the time of the delivery of the

fuel and before such fuel or any part thereof is removed from such wagon, truck, or other conveyance. In the event that solid fuel is sold or offered for sale by a peddler, or by a dealer making sale or delivery in any other manner than by wagon, truck, or other conveyance, such peddler or dealer, shall deliver to the purchaser or intending purchaser, or his agent or representative, or the person to whom delivery is to be made, before the delivery of such fuel or any part thereof, or to the inspector of weights and measures of the city of Chicago upon his demand, a delivery ticket or tickets bearing the name of such peddler or dealer, his license number if a peddler or name and address if a dealer, and showing the net weight, and the kind, grade, and size of the fuel sold or offered for sale.

Every such person, firm or corporation shall, on demand of the inspector of weights and measures of the city of Chicago, or any of his deputies, or the purchaser or intending purchaser or his agent or representative, or the person to whom the delivery is to be made, produce and [fol. 49] deliver said ticket or tickets to said officer or to his deputies, or to the purchaser or intending purchaser, or his agent or representative, or to the person to whom delivery is to be made, and whenever said officer or any of his deputies, or the purchaser or intending purchaser, or his agent or representative, or the person to whom delivery is to be made, shall demand that the said weights shown by said ticket or tickets be verified, it shall thereupon become the duty of the person, firm or corporation delivering such fuel to convey the same forthwith to some public scale selected by the inspector of weights and measures of the city of Chicago, or any of his deputies, or the purchaser or intending purchaser of the fuel being delivered, or his agent or representative, or the person to whom delivery is to be made, in the particular locality where the solid fuel is to be delivered, or to any private scale if the particular locality where the owner thereof shall consent to such use, and permit the weighing of the solid fuel, together with conveyance and equipment, for the purpose of ascertaining the gross weight thereof, and shall, after the delivery of such fuel, return forthwith with the conveyance and equipment used in the delivery of such solid fuel to the same scale and permit the weighing of said conveyance and equipment for the purpose of verify-

ing the net weight of the solid fuel, as shown by the said ticket or tickets; provided, however, that if such person, firm or corporation requests the privilege of re-weighing said solid fuel conveyance and equipment on another and different scale from that selected by the inspector of weights and measures of the city of Chicago, or any of his deputies, or the purchaser or intending purchaser or his agent, or representative, or the person to whom delivery is to be made, said inspector of weights and measures or his deputy, or the purchaser or intending purchaser or his [fol. 50] agent or representative, or the person to whom the delivery is to be made, shall consent to such weighing on some other scale in the particular locality.

Every person, firm or corporation selling or offering for sale solid fuel in the city shall sell the same by avoirdupois weight, except where otherwise provided by contract. (As amended May 18, 1934.)

3343. Penalty.) Any person, firm or corporation selling and delivering or attempting to deliver solid fuel within the city of Chicago who shall provide the driver or person in charge of the wagon, truck, or other conveyance used in the carrying thereof, or the person making or attempting to make the delivery thereof, with a ticket or tickets or memorandum which does not correctly give the information required to be given by virtue of Section 3342, or with a ticket or tickets or memorandum which does not give the result of the actual weighing of such solid fuel, and any such driver and any such persons making or atempting to make delivery of any solid fuel, who shall produce, deliver, offer or tender any ticket or tickets or memorandum which does not correctly give the information aforesaid, or does not give the result of the actual weighing of such solid fuel, shall be fined not less than fifty dollars nor more than two hundred dollars for each offense.

Any person, firm or corporation delivering or attempting to deliver solid fuel within the city of Chicago of a quantity less than that called for by the delivery ticket or tickets, as provided for in Section 3342, shall be fined not less than twenty-five dollars nor more than two hundred dollars for each offense.

Any person, firm or corporation selling and delivering or attempting to deliver solid fuel within the city of Chi- [fol. 51] cago who shall fail to deliver by the person in

charge of the wagon, truck or other conveyance used in the carrying thereof the ticket or tickets or memorandum giving the information required to be given by virtue of Section 3342, and any such driver and any such persons, making or attempting to make delivery of any solid fuel who shall fail, neglect or refuse to deliver to the purchaser or intending purchaser, or his agent or representative, or to the person to whom delivery is to be made, or to the inspector of weights and measures of the city of Chicago or one of his deputies, the ticket or tickets or memorandum as aforesaid, before such solid fuel or any part thereof is removed from the wagon, truck or other conveyance, shall be fined not less than ten dollars nor more than fifty dollars for each offense; and any person, firm or corporation violating any of the provisions of Section 3342, or who shall fail, refuse or neglect to comply with any of the provisions thereof, for which no specific penalty is herein provided, shall be fined not less than ten dollars nor more than fifty dollars for each offense. (As amended May 18, 1934.)

3344. Mixing coal prohibited.) * * * If two or more different kinds, grades or sizes of solid fuel are loaded on the same wagon, truck or other conveyance, each kind, grade and size of solid fuel shall be weighed and loaded separately, and shall be placed in bags, separated by partitions, or placed in closed containers, which closed containers shall have legibly stamped upon their sides the actual net weight and the kind, grade and size of each type of solid fuel contained therein; such loading shall be in a manner sufficient that any time during the selling or delivering of such solid fuel, each kind, grade and size of solid fuel may be weighed separately; and the said person, firm or corporation selling or delivering said solid fuel shall provide the driver of the wagon, truck or other conveyance in which the same is transported, with a delivery [fol. 52] ticket or tickets made out in conformity with the provisions of Section 3342 and shall also show on all invoices, bills and statements rendered the purchaser, the weight of each separate kind, grade or size of solid fuel so delivered.

Any person, firm or corporation violating or failing to comply with any of the provisions of this section shall be fined not less than twenty-five dollars and not more than

one hundred dollars for each offense. (As amended May 18, 1934.)

Hay, Straw, Grain and Mill-Feed

3445. Weighing—reweighing.) Any person in charge of a wagon, or other conveyance used for delivering any such straw, hay, grain or mill-feed within the city of Chicago shall, at the request of the inspector of weights and measures or any of his deputies, or at the request of the purchaser or intending purchaser of any such hay, straw, grain or mill-feed, at any time after the weighing thereof, produce and deliver said memorandum for the inspection of such inspector of weights and measures, his deputy or the purchaser or intending purchaser, and shall upon request of the inspector of weights and measures, his deputy or the purchaser or intending purchaser, go to a scale which has been duly inspected and sealed by the inspector of weights and measures and which is located in the particular locality where the delivery is to be made, and which shall be designated by said inspector of weights and measures, his deputy or the purchaser or intending purchaser, and there weigh such hay, straw, grain or mill-feed about to be delivered, together with the wagon or other conveyance (in case such hay, straw, grain or mill-feed is delivered in wagon-load lots) used for the delivery of the same for the purpose of ascertaining the gross weight thereof, and [fol. 53] shall, after the delivery of such hay, straw, grain or mill-feed return forthwith, with the wagon, or other conveyance (in case such hay, straw, grain or mill-feed is delivered in wagon-load lots) and there weigh such wagon or other conveyance for the purpose of verifying the net weight of such hay, straw, grain or mill-feed as shown by said memorandum; provided, however, that if the seller of such hay, straw, grain or mill-feed, or the driver of the wagon, or the person in charge of any other conveyance, or the person making the delivery, requests the privilege of reweighing such hay, straw, grain or mill-feed on another and different scale from that selected by the inspector of weights and measures or by his deputy, or by the purchaser or intending purchaser, said inspector of weights and measures or his deputy, or the purchaser or intending purchaser, shall consent to such reweighing on some other

scale in the particular locality where such delivery is to be made.

Public Weighmasters.

3612. Appointment.) Any person, firm or corporation owning a scale or scales suitable for weighing any commodity, produce or articles of merchandise in load lots, when contained in any wagon, auto truck or other vehicle, or in any quantity less than load lots when not contained in any wagon, truck or other vehicle, shall be eligible for appointment as a public weighmaster in the city of Chicago upon complying with the provisions of this chapter.

3613. Application.) Any person, firm or corporation owning a scale or scales suitable for weighing as aforesaid desiring to be licensed as a public weighmaster, shall file an application in writing therefor which shall conform to the general requirements of this ordinance relating to applica- [fol. 54] tions for licenses, and shall set forth the location of the place of business for which such license is requested. Such application shall contain, plainly printed thereon, the following form of agreement, which shall be subscribed by the applicant before any license shall be issued thereunder:

"The applicant hereby agrees and consents, as a condition for the issuance of a license hereunder, that in case the applicant as a public weighmaster weighs any load lot of any commodity, produce, article or articles of merchandise sold in load lots by weight, sold or delivered by the applicant or any person directly or indirectly interested with the applicant in the operation of the public scale of the applicant, the inspector of weights and measures of the city of Chicago, or any of his deputies acting under his orders, or the purchaser or consignee, shall have the right to reweigh or cause to be reweighed, as provided in section 2950 of this ordinance, any such load lot of commodity, produce, article or articles of merchandise. This condition is accepted by the applicant with the understanding that the same shall, upon the issuance of a license hereunder, at once become binding on him."

3614. Bond—fee.) Such applicant shall also execute and present with his application a bond in favor of the city of Chicago in the sum of two thousand dollars, with such sureties as may be approved by the comptroller, condi-

tioned for the faithful performance of such applicant's duties as a public weighmaster and for the payment by such public weighmaster of any fine or fines which may be imposed upon him, them or it for any violation of said applicant's duties as such public weighmaster. Upon compliance with the conditions above stated and upon payment to the city collector of the sum of twenty dollars as an annual license fee, the mayor may issue a license authorizing [fol. 55] such applicant to act as a public weighmaster.

3615. Conditions binding on licensee.) The license so issued shall contain apt words indicating that the same is issued and accepted subject to the conditions and agreements set forth in section 3613 and contained in the application for same and subscribed by the licensee when application for such license is made; and the said conditions shall upon the issuance of said license at once become binding on the licensee, his agents and employes, who shall conform to the requirements of same. Any person or corporation who fails to comply with or violates any of the provisions of this section, or, having received a license under the terms and conditions imposed by this section, fails to observe the conditions so imposed, shall be liable, in addition to any other penalty prescribed by law, to a penalty of fifty dollars for each offense.

3617. Scale—how provided.) Each public weighmaster licensed under the provisions of this chapter shall provide his own scales, which shall be of a kind or pattern approved by the inspector of weights and measures, and each such public weighmaster shall keep his said scales properly adjusted and repaired at his own expense. It shall be the duty of each public weighmaster to have such scales inspected by the inspector of weights and measures at least once exery six months, and oftener if required.

3619. Shall weigh all commodities tendered for weighing.) Public weighmasters owning scales suitable for weighing commodities loaded in wagons, trucks or other vehicles, shall weigh any commodity, produce or articles of merchandise loaded in any wagon, truck or other vehicle when requested so to do by the person bringing the same to the scale of such weighmaster; public weighmasters owning scales suitable for weighing commodities in amounts [fol. 56] or quantities less than load lotes when not con-

tained in any wagon, truck or other vehicle, shall weigh any such commodity when requested so to do by any person bringing the same to the scale of such weighmaster.

3621. Charges for weighing.) Public weighmasters, when not the owners or sellers of the articles, commodities or produce weighed by them, shall be entitled to charge and receive a sum not in excess of twenty-five cents for each and every load or part of load (or lesser quantity when not contained in any wagon, truck or other vehicle), of any commodity, produce, article or articles of merchandise weighed by them over the scales of such public weighmasters.

3622. Seal.) Each public and deputy weighmaster shall procure a seal, at his own expense, which seal shall be round in form not to exceed one and one-quarter inches in diameter, of a type similar to a notary public's seal. The seal of a public weighmaster shall show his name around the upper half of the dies and his title around the lower half of the dies. The seal of a deputy public weighmaster shall have the name of the weighmaster who appointed him around the upper half of the dies, with his own name across the center of the dies and his title around the lower half of the dies. Such seal shall be stamped over the weights set forth therein upon each certificate issued by such public or deputy weighmaster. No deputy weighmaster shall use his seal on any weight certificate other than the one of the public weighmaster by whom he has been appointed, nor shall he be authorized to weigh or issue certificates for any weighing done on any scale other than those the locations of which appear on the license application of the public weighmaster appointing him or such additional ones as may be installed after the application has been made, as provided for in section 3618; provided, however, that in case of an emergency caused by the breaking down or [fol. 57] getting out of order of the scale of the public weighmaster, he shall, pending the repairing and resealing of such scale, be authorized to weigh on another different scale upon the public weighmaster appointing him assuming responsibility for the accuracy of the scale so used.

3623. Weight certificates.) Each public weighmaster shall issue a weight certificate, signed by him or his deputy, under his official seal, which certificate shall state thereon

the following: The commodity, produce, article or articles weighed; the date; the name of the weighmaster or deputy weighmaster who did the weighing; the name and address of the person, firm or corporation for whom the weighing was done; the name of the driver of the vehicle bringing such commodity, produce, article or articles to the scales, or, if the same is not contained in a vehicle, the name and address of the person bringing the same to the scales; where contained in a vehicle, the kind of vehicle and the name and address of the purchaser or consignee of the commodity weighed; when the commodity is loaded in a vehicle, the total or gross weight of the commodity weighed and the conveyance in which it is loaded, together with the driver and any other person who may be on the vehicle when weighed, and of the horses, if a horse-drawn vehicle and the horses are weighed; the tare weight or the weight of the vehicle, including driver and any other person who may have been on the vehicle when weighed while loading and including the horses if they were weighed when the loaded vehicle was weighed; the net weight of the commodity, produce, article or articles contained in such vehicle, or the net weight of the commodity, produce, article or articles when not contained in a vehicle at the time of weighing. In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed [fol. 58] the vehicle in such manner as to secure the weight as specified herein; provided, however, that in the case of a divided load, by which is meant a load containing more than one order for the same or different purchasers or consignees, no penalty shall be imposed under this chapter by reason of the fact that the tare weight shown on the weight certificates is only the original tare weight of the vehicle and equipment before loading if in such case each order has been weighed separately and the net weight of each separate order or delivery is correctly shown on the weight certificate and such correct net weight is delivered.

3626. Penalty for issuing certificate giving false weight.) Any public weighmaster or any deputy public weighmaster who shall issue a certificate of weight giving a false weight of any article or commodity weighed by him, to any person, firm or corporation, shall be fined not less than twenty-five dollars nor more than two hundred dollars for each offense; and upon conviction hereunder, the mayor, in his discretion,

may cancel the license of such weighmaster or deputy weighmaster, and may thereafter, in his discretion, refuse to issue a license to such weighmaster or deputy weighmaster in the same or succeeding year. Any fine imposed against such public weighmaster or deputy weighmaster may be enforced against his surety under the bond furnished by such weighmaster or deputy weighmaster.

Witness my hand and seal this 8th day of July, A. D. 1935.

(Signed) Frank M. Padden, Judge of the Municipal Court of Chicago. (Seal.)

[fol. 59] Presented to me in open court this 8th day of July, A. D. 1935, in absence of trial judge from jurisdiction.

(Signed) John J. Sonsteby, Chief Justice.

Approved as to form. (Signed) Martin H. Foss, Assistant Corporation Counsel, Attorney for City of Chicago, Plaintiff.

(Stamped:) "Filed The Municipal Court of Chicago, Jul. 8, 1935. Joseph L. Gill, Clerk."

STIPULATION TO USE ORIGINAL REPORT OF PROCEEDINGS

The plaintiff, City of Chicago, and the said defendant, by their respective attorneys, hereby stipulate that the above original report of proceedings may in lieu of a copy be inserted by the Clerk of this Court in the transcript of the record of this cause for all purposes of review hereof.

City of Chicago, Plaintiff, by William H. Sexton, Corporation Counsel, Martin H. Foss, Assistant Corporation Counsel, Its Attorneys. Marcus Hauge, Defendant, by Thomas C. McConnell, His Attorney.

[fols. 60 & 61] CERTIFICATE OF CLERK OF TRIAL COURT TO TRANSCRIPT OF RECORD

The certificate, dated August 6, 1935, signed by Joseph L. Gill, Clerk, and sealed with the seal of The Municipal Court of Chicago, certifies the above and foregoing to be a true, perfect and complete transcript of the record as per

præcipe in a certain cause, except the bill of exceptions or report of proceedings, the original of which is incorporated herein according to law and by stipulation of the parties hereto, lately pending in said court, wherein City of Chicago is plaintiff and Marcus Hauge is defendant.

Said complete transcript of record is stamped: "Filed Aug. 7, 1935. Adam F. Bloch, Clerk."

Respectfully submitted, Babcock, Gilruth, Beck & McConnell, Attorneys for Marcus Hauge, Appellant.

[fols. 62 & 63] In Supreme Court of Illinois

[Title omitted]

Order as to Briefs—Filed August 22, 1935

Upon motion of the Appellant and without objection by the Appellee and it appearing that the cases hereinafter mentioned involve similar question of law,

It is Hereby Ordered, that in lieu of filing separate briefs in each of the following three cases now pending in this Court the appellants therein may join in filing fifteen (15) copies of one brief and fifteen (15) copies of one reply brief and the appellee may file fifteen (15) copies of one brief and all of said briefs shall stand as briefs in each of said three cases and shall bear the titles of said three cases, to-wit:

General No. 23224—City of Chicago, Appellee, vs. Isaac Waters, Appellant;
General No. 23225—City of Chicago, Appellee, vs. Marcus Hauge, Appellant; and
General No. 23226—City of Chicago, Appellee, vs. Frank Gorman, Appellant.

Enter this 20th day of August, A. D. 1935.
Francis S. Wilson, Justice, Supreme Court of Illinois.

[File endorsement omitted.]

[fols. 64 & 65] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER OF SUBMISSION—October 16, 1935

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellants have filed herein duly certified transcripts of the record of proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellees having entered motion to affirm said judgments and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cases are now ready to be taken, and said causes having been consolidated by order of Court on this date on suggestions of counsel, the said consolidated cases having been argued orally by Thomas C. McConnell for appellants and by Martin H. Foss and David Lefkovits for appellees, are here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that the consolidated causes be and the same are hereby taken under advisement.

[fol. 66] IN SUPREME COURT OF ILLINOIS

Dockets Nos. 23224-225-226—Agenda 66—October, 1935

THE CITY OF CHICAGO, Appellee,

v.

ISAAC WATERS, Appellant

THE CITY OF CHICAGO, Appellee,

v.

MARCUS HAUGE, Appellant

THE CITY OF CHICAGO, Appellee,

v.

FRANK GORMAN, Appellant

OPINION—Filed February 14, 1936

Mr. Justice HERRICK delivered the opinion of the court:

In the municipal court of Chicago separate proceedings were instituted by the city of Chicago against Isaac Waters, Marcus Hauge and Frank Gorman for the violation of section 2947 of the revised code of Chicago of 1931. The cases were separately tried on the same day without a jury, each defendant was found guilty and judgment was entered against him. In each case the trial judge certified that the validity of a municipal ordinance was involved and in his opinion the public interest required a direct appeal to this court. Each defendant perfected his appeal and the three cases were consolidated in this court for hearing.

Section 2947 of the ordinance in question provides, in substance, that every commodity sold in lot loads by weight delivered by truck within the city should be weighed by a city public weigh-master, and that his certificate of weight for each such lot should be delivered by the driver or person in charge of the truck or other vehicle to the purchaser or consignee of the load at the time of delivery and before any of the commodity is removed from the vehicle. Section 3623 provides that the public weigh-master's weight certificate shall state, inter alia, the commodity weighed, the date, the name and address of the purchaser or con-

signee, the conveyance in which the commodity is loaded, and the tare weight and the net weight of the commodity contained in such vehicle. The section proceeds: "In no case is any public weigh-master to state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein," etc.

In addition to the attack made on the ordinance the defendants contend that the coal severally trucked by them was appropriated to the contract of purchase in Morris, Illinois, and then and there became the property of the buyer; that the ordinance has no application to the deliveries made by the defendants because the sale was made and completed without the corporate limits of the city of Chicago.

We will first take up the issue as to whether the sale was [fol. 67] made and completed in Morris or Chicago. The evidence common to the three cases is that the appellants delivered coal in truck-load lots to purchasers living in Chicago, none of which coal was weighed by a city of Chicago public weigh-master and no public weigh-master's certificate had been issued, as required by the provisions of the ordinance in question. The defendants are severally non-residents of Chicago, Hauge and Waters living at Morris and Gorman at Blue Island. Each owns his own truck. The coal delivered was secured by each defendant from a coal company at Morris. The company has an independent coal dealer or broker residing in Chicago who sells the coal of the coal company. The company takes orders at times direct from the customer, but there is no evidence in any of the cases to show that situation applies to any sale here. The usual custom of the business is that a statement of the account is rendered by the coal company and delivered to the truck-driver. No separate charge is entered thereon for the trucking service. The driver collects for the coal, deducts his charges for trucking and either pays the remainder to the broker in Chicago or the coal company at Morris, whichever is the more convenient for the driver If payment is made to the coal company, it in turn pays the Chicago broker for his services. The coal is sold delivered in the purchaser's bin by the company. The truck driver receives his orders to load his truck and where to make delivery from the coal company. None of the de-

fendants ever had any transaction with the customer to whom delivery was made, was not employed by the customer to haul the coal, the customer gave no directions for the delivery of the coal and had no control over the vehicle in which the coal was transported. The details of the method of transportation and delivery were arranged by the coal company. The load trucked by Hauge was for three different customers. He received the statement of the account from the Chicago broker, with the names of the customers and the quantity of coal to be delivered to each one. The defendant Waters received a statement from the coal company for the load of coal delivered by him. The statement showed a flat price of $18, plus tax, for three tons, and showed the coal was purchased from a coal company which operated a mine at Morris. Gorman received his orders to deliver the coal from the mining company at Morris. He did not testify. The statement for the coal delivered by him was offered in evidence and showed that the customer paid a flat price of $11.50, plus tax, for three tons of coal.

It is the law that sales of personal property are regarded as made at the place where the vendor shows his assent to the sale by delivering the property sold to the vendee's carrier, in the absence of any agreement or any special circumstances showing a contrary situation. (Ill. State Bar Stat. 1935, chap. 121a, sec. 46, par. 49; City of Chicago v. DiSalvo, 302 Ill. 85; People v. Hill Top Mining Co., 300 id. 564.) The evidence here clearly shows that the carrier was neither selected nor designated by the purchaser, and that the purchaser, so far as he knew, was not paying any separate charge for the carriage of the coal. The price to [fol. 68] him was net, delivered by him by the seller. The defendants were clearly the agents of the coal company, and each sale was made within the city limits of Chicago.

There remains for decision the question of the validity of the ordinance. The defendants contend that the effect of the above two sections of the ordinance is to require that coal brought into the city of Chicago by truck direct from the mine to the consumer in Chicago, although weighed at the mine on State-tested scales, be unloaded within the city limits of Chicago, so that the truck can there first be weighed empty by a public weigh-master and then reloaded in order that both truck and coal can be re-weighed by the

same public weigh-master for the purpose of making the certificate described in section 3623 and required by section 2947, for the violation of which latter section the judgments rested. It is here urged that by reason of these requirements, as applied to the defendants, the ordinance is unreasonable, deprives the defendants of the equal protection of the law and deprives them of liberty and due process of law, in violation of section 1 of the fourteenth amendment to the Federal constitution and of section 2 of article 2 of the Illinois constitution.

This issue is one of first impression in this court, and we are not referred by either side to any decision where the precise question presented has been decided. The problem must therefore be resolved by the application of sound, fundamental legal principles. It is immaterial to the issues here that the coal in question was weighed outside of the city of Chicago on State-tested scales. The Weights and Measures act does not repeal, supersede or to any extent modify the right of a municipality to adopt an ordinance regulating the method of ascertaining the correctness of weights and measures. The power of the city to adopt the particular ordinance before us, together with its reasonableness, and that it was not subject to attack as making a classification obnoxious to the constitutional provision, was definitely decided in City of Chicago v. Wisconsin Lime and Cement Co., 312 Ill. 520. The attack here made on the validity and constitutionality of the ordinance is not the same, however, as was decided in that case.

The defendants, among other cases, rely on City of Chicago v. Kautz, 313 Ill. 196, as supporting their side of the issue as to the unreasonableness of the ordinance. In that case the provision of the ordinance authorizing a city inspector or his deputies, without reasonable grounds for suspecting a violation of the ordinance, to compel a vehicle-driver enroute to the place of delivery after his load had been weighed in conformity with the provisions of the ordinance, to re-weigh the load on scales selected by the inspector or his deputies, was held void as unreasonable. That provision did not affect the remainder of the ordinance. The case presented here does not grow out of an attempt to have any of the defendants here re-weigh his coal after having it once weighed over a Chicago public weigh-master's scales. The case is not authority, either helpful

or persuasive, of the correctness of the defendants' contention.

[fol. 69] In the determination of whether the ordinance is unreasonable and contrary to the grain of the constitutional provisions supra we must not be unmindful of those legal rules which have survived the test of many years for the determination of the reasonableness and constitutionality of statutes and ordinances. Where the ordinance is within the grant of power conferred by the legislature the presumption is in favor of the validity of the ordinance, and the burden is always on the party attacking its legality to show such invalidity (Ferguson Coal Co. v. Thompson, 343 Ill. 20; City of Chicago v. Mayer, 290 id. 142; City of Chicago v. Washington Home, 289 id. 206; City of Chicago v. Shaw Livery Co. 258 id. 409); and the courts are without power to inquire into the wisdom of an ordinance or the motives that prompted its enactment, with the possible exception that municipal ordinances may be impeached for fraud by persons injuriously affected thereby. (People v. Grand Trunk Western Railway Co., 232 Ill. 292.) Ordinances which regulate the methods of weighing coal and other bulky articles sold and delivered within the boundaries of the municipality are strictly within the police power. City of Chicago v. Wisconsin Lime and Cement Co. supra; O'Malley v. Borough of Freeport, 96 Pa. St. 24, 30; McQuillan on Mun. Ordinances, sec. 485.

The opportunity to defraud the consumer in the sale of coal in load lots is great and the consumer has no adequate way to protect himself against being cheated. The delivery of true weights of coal to the consumer is a matter clearly related to the public welfare and the city has the right to adopt reasonable ordinances therefor. (City of Chicago v. Wisconsin Lime and Cement Co. supra.) The Court will take judicial notice of the fact that Morris is about sixty-two miles south and west of Chicago and that facilities are available for the transportation of coal by rail direct from Morris to Chicago. It is a matter of common knowledge that enormous quantities of coal are moved by both rail and water to Chicago and there held in coal yards, bins or structures for the storage of coal until moved therefrom to the purchaser, and occasionally coal may be hauled from the car or vessel in vehicles direct to the consumer. As to

coal thus transported and sold, an ordinary and natural way to regulate the weighing of the load would be to weigh the vehicle empty and then weigh the same vehicle after it is loaded for delivery to the vendee. The circumstance that has brought about the controversy here is, after all, one of transportation.

The defendants, who severally reside outside the city of Chicago, are hauling for a coal dealer whose source of supply is at Morris, Illinois, and who is selling, either through itself or broker in Chicago, direct to citizens who reside in the city of Chicago. It is more convenient, and doubtless less expensive, for the particular dealer to weigh his truck, both empty and loaded, on the public weigh-master's scale at Morris. This, however, is not a compliance with the ordinance. The defendants claim it is un- [fol. 70] reasonable to require them to unload their trucks after entering Chicago, weigh the truck empty and then reload and make delivery, and that the coal is always damaged and there is always a loss of coal occasioned by the unloading and re-loading. There may be a loss. Such loss sustained by unloading and re-loading, however, is common to those dealers who maintain coal yards and bins in the city of Chicago for the sale of coal and who comply with the ordinance. The object of the ordinance was not to benefit persons engaged in the coal business, or to give one competing dealer an advantage over another, or to enable some to comply with the ordinance readily and without inconvenience while others could not, but its purpose was to endeavor to give to the buyer of the coal, as nearly as practicable, honest weight. The defendants, non-residents of the city of Chicago, are asking for a practice of weighing, as applied to the business done by them in the city, which under the ordinance here would not apply to those truckers living in the city and delivering coal from the local yards or local dealers in the city to the consumer. To recognize the demand of the defendants would be to discriminate between the local truckmen and dealers in Chicago in favor of non-residents.

In State v. Nelson, 68 N. W. (Minn.) 1066, 34 L. R. A. 318, the Supreme Court upheld the validity of an ordinance of the city of Minneapolis which provided, in substance, that any person desiring to sell milk in the city be required to apply for a license, and before the license be issued the

dairy herds of the applicant should be examined as to healthfulness, etc., and any tubercular cows eliminated. The ordinance was objected to as being extra-territorial. The ordinance was sustained upon the principle that the offense, under the ordinance, was the sale of milk without a license within the corporate limits of the city, and if the owner of the dairy did not wish to have his dairy subjected to the regulation he need not sell his milk in the city. In In re Vandine, 6 Pick. (Mass.) 187, 17 Am. Dec. 351, an ordinance was declared valid which required garbage collectors operating in the City of Boston to be licensed, regardless of whether the licensee was a resident or non-resident of Boston. And so it was held in the case of City of Petersburg v. Cocke, 36 L. R. A. (Va.) 432, that a license tax imposed on the right to practice law in a city is properly collectible from an attorney who practices law therein although he is not a resident of the city.

This court sustained an ordinance requiring persons transporting coal in vehicles from places within to places outside the city to obtain a license before such movement could be made. (Gartside v. City of East St. Louis, 43 Ill. 47.) While the transportation feature there is the converse of that here, the loads originating without the city and moving into the city, the principle to be deducted is the same. If the city may lawfully license a business it may [fol. 71] impose reasonable regulations upon such business. The power to regulate carries with it the power to license, but in the absence of express statutory provision there can be no power to license without the power to regulate.

The ruling to be deducted from the authorities is, that where a city has enacted an ordinance within its charter or granted powers regulating a business, the non-residents who desire to follow such business within such municipality must conform to the requirements of the ordinance. If the defendant non-residents desire to compete in the trucking business in the Chicago market they must submit to the requirements of the ordinance regulating the business. The facts, if there be such, that it may be necessary to establish coal yards in Chicago, ship by rail in car-load lots, unload from the car and deliver to the purchaser, or submit to an unloading and re-weighing of the coal in the event that coal moves into Chicago by trucks, are incidental problems, to

be solved by the coal company in the event it desires to sell in the Chicago market. There is no discrimination made by the ordinance against the defendants. They have merely elected to do their business in a manner more convenient to them and different from the method prescribed by the ordinance. Instead of conforming to the ordinance they are asking that they — excepted from its terms.

The ordinance is not unreasonable and is not susceptible to the charges lodged against it of being a violation of the provisions named of the State and Federal constitutions.

The several judgments of the municipal court of Chicago are affirmed.

Judgments affirmed.

Mr. Justice Shaw, dissenting.

[fols. 72 & 73] In Supreme Court of Illinois

No. 23225

City of Chicago, Appellee,

vs.

Marcus Hauge, Appellant

Appeal from Municipal Court of Chicago

3432244

Judgment—February 14, 1936

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error;

Therefore, it is considered by the Court that the Judgment of the Municipal Court aforesaid be Affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error.

And it is further considered by the Court that the said Appellee recover of and from the said Appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

[fol. 74] IN SUPREME COURT OF ILLINOIS

[Title omitted]

PETITION AND SUGGESTIONS THAT A REHEARING BE GRANTED IN THE ABOVE ENTITLED CAUSE UPON THIS COURT'S OWN MOTION—Filed February 19, 1936

Now come Palmer Byrne, duly appointed City Attorney of the City of Ottawa, LaSalle County, State of Illinois, and Elmer Mohan, duly elected State's Attorney of the County of LaSalle, State of Illinois, and S. J. Holderman, duly elected State's Attorney of the County of Grundy, State of Illinois, and Erwin Godfrey, duly appointed City Attorney of the City of Morris, Grundy County, State of Illinois, and ask leave to intervene herein as amici curiae and petition this Court to grant a rehearing on its own motion of the matters and things involved in the above entitled cause on the ground that matters of large public interest to the communities which your petitioners represent, as well as the People of the State of Illinois, are involved which apparently have not been taken into consideration by this Court in rendering its decision in the above entitled cause, and in support of this Petition present herewith the following suggestions:

[fol. 75] 1. That in holding that Section 2947 of the Municipal Ordinances of the City of Chicago is a reasonable ordinance, this Court has approved a method of reweighing that in practical effect imposes an embargo on Grundy and LaSalle County coal sold within the territorial limits of the City of Chicago and trucked from the mine to the consumer because the cost of loading and unloading trucks to comply with such ordinance amounts to approximately One Dollar ($1.00) a ton in labor and handling costs and destroys the price differential on such coal and makes it impossible for mine operators to compete with local dealers in the Chicago coal market.

2. That the effect of this decision will be to close the mines located in the Illinois River Valley, many of which are not adjacent to any rail, switch or spur connections and that depriving these mines of the right to truck coal will deprive them of their market for their produce and that approximately two thousand (2,000) families in Grundy County alone are dependent upon the mines affected by this decision for their livelihood.

3. That a large part of the commodities produced and sold by residents of Grundy and LaSalle Counties are sold in load lots within the territorial limits of the City of Chicago by weight and the effect of this ordinance is to impose a barrier on such trade and commerce with the City of Chicago whereas such weight can easily be determined after delivery in such manner as to protect the consumer of such produce and commodities in exactly the same way and with the same effect as the ordinance which this Court has held valid; that the decision of this Court affords a method by which the various communities of the State of Illinois can erect trade barriers between themselves against the public interest of the State of Illinois and the several communities thereof.

[fol. 76] 4. That in its said decision this Court has held valid a method of Weighing which in and of itself would make it impossible for the farmers of the State of Illinois to weigh their produce upon delivery in the City of Chicago in that it compels a dumping of the load and in that the ordinance ruled upon is a general ordinance applied to all commodities sold by load weights.

5. That a weighing of coal or other commodities together with the truck or vehicle in which they are contained prior to delivery and a return to the scales for the purpose of determining the tare weight or weight of the unloaded truck, as a practical matter, would give all the protection which the present ordinance affords to the consumer and provide a reasonable method of weighing, which the Illinois Valley mines can comply with.

6. That Section 2947 of the Ordinances of the City of Chicago does not expressly provide for the weighing of the trucks empty and then loaded but the ordinance has been so interpreted by the City Sealer of the City of Chicago,

and that the method of checking weights as long as trade and commerce has been carried on in this state has been to weigh the loaded vehicle and unload upon delivery to the consumer and then immediately return to the same scale and weigh the empty vehicle, which practice conforms to the laws of the State of Illinois, and to the special ordinance of the City of Chicago which deals specifically with coal, being Sections 3341, 3342, 3343 and 3344, of Article V of Chapter 67 of Revised Chicago Code of 1931, and which method the coal operators of the Illinois River Valley have been willing to comply with.

[fol. 77] 7. That this Court should take judicial notice of the fact that there are no public scales in the City of Chicago except in the yards of coal dealers operating within the territorial limits of such city and that such so-called public weigh-masters are coal yard employees and their scales are located in local yards competing with the Illinois River Valley mines and that such coal yards do not permit the dumping of coal in their yards so that a compliance with an ordinance providing for the dumping of coal in order to check the weighing which has already been had at the mines in accordance with all the provisions of the state statutes is impossible.

8. That valid ordinances of the City of Chicago provide penalties for short weight and that the present ordinance affords no protection against short weight because a dishonest driver can unload his truck within the city limits of the City of Chicago after a weighing over public weigh-master's scales within the city limits of said city, and while the Court has taken judicial notice of the fact that Morris, Illinois, is sixty-two miles from the City limits of the City of Chicago, it should also take judicial notice of the fact that there are 3,631 miles of streets and 912 miles of paved alleys within the city limits of the City of Chicago, upon any of which the truck driver delivering coal after a valid weighing might unload such coal.

9. That permitting a weighing loaded and then empty does not discriminate against Chicago coal dealers or truckers but merely recognizes the differences necessarily involved between trucking coal direct from mine to consumer and selling coal from a yard.

[fol. 78] 10. That the Chicago coal dealer operating from a yard weighs his coal from a yard not because he is forced by the ordinance but because he is operating a coal yard, and all the present ordinance requires such dealer to do is post a $1,000.00 bond and obtain a weighmaster's license, and then weigh his coal on his own scales, and to say that operating a coal yard is merely incidental to doing a coal business is to say that each trucker must open up a coal yard and cease doing a lawful, legitimate business of trucking coal from mine to consumer and fails to recognize that such method of doing business is lawful, legal and legitimate and amounts to putting the coal business in a "straight jacket" by preventing the adoption of economic and efficient methods of transporting coal from mine to consumer without rehandling.

11. The establishment and operation of a coal yard is not, as held by this Court, a mere incident to obtaining honest weights and to compel each trucker to operate a coal yard is to prevent him from doing a legal, lawful and legitimate business which does not result in any corresponding benefit to the public or the consumer of coal but operates only for the advantage of a coal dealer doing business from a yard and enhances the retail price of coal in the amount of the handling charge involved in dumping coal and then reweighing it, and the maintenance of a coal yard within the city limits of the City of Chicago.

Wherefore, the petitioners ask that on account of the large public interest involved in the questions presented to this Court in the above entitled matter that the cause should again be considered by this Court and a rehearing granted on its own motion, and that this Court either hold that the present ordinance is unconstitutional or should so construe the provisions of the ordinance as to permit a [fol. 79] method of weighing which will allow the tare weight of the vehicle used in the delivery of coal to be checked after such coal has been delivered to the consumer.

And your petitioners will forever pray.

S. J. Holderman. Erwin C. Godfrey. Elmer Mohan. Palmer C. Byrne.

Duly sworn to by S. J. Holderman. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 80] IN SUPREME COURT OF ILLINOIS

[Title omitted]

AFFIDAVIT OF MAILING—Filed February 19, 1936

STATE OF ILLINOIS,
County of Grundy, ss:

I, S. J. Holderman, State's Attorney of Grundy County, Illinois, and one of the petitioners in the above entitled cause, being first duly sworn on oath depose and say that I have sent by mail, postpaid, on the 18th day of February, A. D. 1936, to the Corporation Counsel of the City of Chicago, Barnet Hodes, to his office in the City Hall in the City of Chicago, a copy of the petition and the notice of presentment of said petition, which said notice stated the nature of the petition and the time and place of filing the same, and that the copy of the petition was a true and correct copy of the original petition filed; and, that I further sent by mail, postpaid, on the 18th day of February, A. D. 1936, to the firm of Babcock, Gilruth, Beck & McConnell, at 231 South LaSalle Street, in the City of Chicago, Illinois, a notice of the filing of the petition and a copy of the petition itself, [fols. 81-84] which notice stated the nature of the petition and the time and place of filing said petition.

S. J. Holderman.

Subscribed and Sworn to, before me, a Notary Public, this 18th day of February, A. D. 1936. Elsa A. Kussler, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 85] IN SUPREME COURT OF ILLINOIS

[Title omitted]

NOTICE OF PETITION FOR REHEARING—Filed February 21, 1936

To Honorable Barnet Hodes, Corporation Counsel, Attention: M. H. Foss, Esquire, City Hall, Chicago, Attorney for Appellee; Honorable Adam F. Bloch, Clerk Supreme

Court of Illinois, Springfield, Illinois; Honorable Samuel P. Irwin, Official Reporter, Bloomington, Illinois:

The appellants, and each of them, in the above entitled cause, hereby give notice, pursuant to Rule 44 of the Supreme Court of Illinois, that they will file a petition for rehearing herein within the time provided by said rule.

Babcock, Gilruth, Beck & McConnell, Attorneys for Appellants, Isaac Waters, Marcus Hauge and Frank Gorman.

[File endorsement omitted.]

[fol. 86] State of Illinois,
County of Cook, ss:

Owen Rall, being first duly sworn, on oath deposes and says that he served true and correct duplicate originals of the above and foregoing notice upon the persons to whom said notice is directed, by mailing to each such person, postage prepaid, a duplicate original of such notice addressed to him at the address given above, and that said notices so addressed were deposited in the United States mail at Chicago on the 20th day of February, A. D. 1936.

Owen Rall.

Subscribed and sworn to before me at Chicago, Illinois, this 20th day of February, A. D. 1936. Edna M. Radoll, Notary Public. (Notarial Seal.)

[fols. 87-107] Recital as to Filing of Petition for Rehearing

Be it Remembered, that to-wit, on the 6th day of March, A. D. 1936, the same being one of the days in vacation after the February term of said Supreme Court, and within the time for filing Petition for Rehearing provided by the Rules of said Court, Petition for Rehearing was filed in the office of the Clerk of said Supreme Court, which said Petition for Rehearing is in the words and figures as follows, to-wit:

Petition for rehearing, covering 18 pages, omitted from this print. It was denied, and nothing more by order of April 24, 1936.

[fol. 108] IN SUPREME COURT OF ILLINOIS

DISSENTING OPINION—Filed March 11, 1936

SHAW, J., and STONE, C. J., dissenting:

In our opinion the ordinance set forth in the foregoing opinion is unreasonable and should be held void. It shows on its face that it is cleverly designed for the purpose of conferring a monopoly in the coal business upon dealers residing within the city of Chicago, to the exclusion of other citizens residing outside of that city who have an entirely lawful right to sell to persons who live within the corporate limits. This is apparent from the requirement that the empty wagon or truck must be weighed before the load is delivered to the purchaser. We cannot perceive any reason why the purchaser could not as well be protected by weighing the empty wagon or truck after delivery. This would permit hauling the load across public scales to obtain the gross weight, the unloading of the commodity, followed by weighing the empty wagon or truck to obtain the tare weight, and the subtraction of the tare from the gross to obtain the net. This procedure would give an accurate net weight, which is the only point as to which the public may require protection, and if that is the true purpose of the ordinance, which it obviously is not, it would serve all legitimate purposes. Under such an ordinance, producers of coal or other commodities who live outside of Chicago could deliver their produce within that city and the residents of that city could have the benefit of whatever savings might be involved. It is clearly unreasonable to require that a load of coal coming into Chicago be unloaded, the truck weighed, then the coal re-loaded and weighed again. This extra and useless handling charge can inure only to the benefit of local dealers and it can only result in penalizing the consumer and the outside producer.

The holding in this case is in our opinion contrary to what we said in City of Chicago v. Kautz, 313 Ill. 196; "If, under the guise of protecting the public interests, the ordi-

nance arbitrarily interferes with private business and imposes unusual and unnecessarily restrictive regulations upon lawful occupations it is void. City of Chicago v. Hebard Express Co., 301 Ill. 570; McCray v. City of Chicago, 292 id. 60; Haskell v. Howard, 269 id. 550; Frost v. City of Chicago, 178 id. 250; Toledo, Wabash and Western Railway Co. v. City of Jacksonville, 67 id. 37." In the same case we pointed out that in order to come within the police power an ordinance of a regulatory nature must be of such a character as to tend in some degree toward the prevention of an offense or the prevention of public health, morals, safety or welfare.

The argument that the case of Wisconsin Lime and Cement Co. v. City of Chicago, 312 Ill. 520, is controlling here, is not impressive. This ordinance was there held to be reasonable as applied to coal dealers operating within the city of Chicago, on the ground that it was "liberal in permitting the dealers themselves to be appointed deputies for their own convenience." Here the record shows that the complaining mining companies cannot obtain weighmasters certificates, thus effectually shutting out of the markets of the city of Chicago a commodity that the people have a right to buy. To put the unreasonable and unnecessary burden of unloading, weighing the truck and reload-[fol. 109] ing the coal, upon those who would offer coal to residents of the city of Chicago, from the outside of that city, is not in the interest of the public welfare and is not necessary to secure honest weights.

It is quite as much in the interest of the public welfare that the people of the city of Chicago be afforded access to cheap markets for the necessities of life as it is that weights be watched. To so restrict access to such market by putting such unnecessary expense on the purchaser is clearly unreasonable.

It is likewise an unjust discrimination against large communities that happen to be so situated as to enable them to take coal from the ground cheaply and thus give a livelihood to thousands working in that business.

It is well known that there are many sources of cheap coal within trucking distance of Chicago, and that by loading directly onto a truck at the mine and unloading directly into the consumer's bin, many handling charges are avoided. While such competition is clearly disadvantage-

ous to Chicago coal dealers, it is certainly advantageous to the mine owners and those citizens of Chicago who wish to purchase this kind of coal. No one can doubt the legal right of these mine owners and consumers to deal directly with each other if they choose so to do, and, in our opinion, an ordinance which throws an artificial and unreasonable barrier across the path of this commerce, without any corresponding benefit to the health, morals, safety or welfare of the people, is void.

[fols. 110-113] In Supreme Court of Illinois

[Title omitted]

Order Denying Rehearing, etc.—April 24, 1936

Now on this day the Court having duly considered motion by City Attorney of Ottawa and others for leave to appear as Amici Curiæ and that rehearing be granted upon the Court's own motion and the Court being now advised in the premises overrules and denies the motion.

And the Court having also considered petition for rehearing filed in the consolidated cases and being now advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

[fol. 114] In Supreme Court of the United States

[Title omitted]

Assignment of Errors—Filed May 25, 1936

Comes now the appellant, Marcus Hauge, by Thomas C. McConnell and Owen Rall, his attorneys, and assigns the following errors on the record and proceedings in this cause:

1. The Supreme Court of Illinois erred in holding that Section 2947 of the Revised Chicago Code of 1931 is not repugnant to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Illinois erred in holding that said Section does not deny to the appellant the equal protection of the laws guaranteed to the appellant by Section

1 of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of Illinois erred in holding that said Section does not deprive the appellant of liberty and property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

4. The Supreme Court of Illinois erred in holding that the said Section is a valid exercise of the police power.

5. The Supreme Court of Illinois erred in affirming the [fol. 115] judgment of The Municipal Court of Chicago.

6. The Supreme Court of Illinois erred in refusing to reverse the judgment of The Municipal Court of Chicago.

Wherefore, on account of the errors hereinbefore assigned, the appellant prays that the said judgment of the Supreme Court of the State of Illinois, entered the 14th day of February, 1936, which became final on April 24, 1936 by the denial of the petition of this appellant for rehearing, which was filed in apt time under Rule 44 of the Supreme Court of Illinois (355 Ill. 45), in the above entitled cause, be reversed and the judgment be entered in favor of this appellant.

Thomas C. McConnell, Owen Rall, Attorneys for Appellant.

May 25, 1936.

[fols. 116 & 117] [File endorsement omitted.]

[fol. 118] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 25, 1936

To the Honorable Clyde E. Stone, Chief Justice of the Supreme Court of the State of Illinois:

Your petitioner, Marcus Hauge, respectfully shows:

1. Your petitioner is the appellant in the above entitled cause.

2. The appellant, Marcus Hauge, appealed to the Supreme Court of Illinois from a judgment of The Municipal Court of Chicago finding the appellant guilty of a violation of Section 2947 of the Revised Chicago Code of 1931. Upon the hearing of said appeal by the Supreme Court of Illinois, the Court heretofore, to-wit, on February 14, 1936, filed an opinion and entered judgment affirming the judgment of The Municipal Court of Chicago. Thereafter and within the time permitted by Rule 44 of this Court (355 Ill. 45), the appellant gave notice to the attorney for the City of Chicago, appellee, the Clerk of the Supreme Court of Illinois, and the Official Reporter of decisions that he would file a petition for rehearing in said cause, which petition was thereafter, to-wit, on March 6, 1936, being within the time allowed by said Rule 44, duly filed herein. The [fol. 119] filing of said petition for rehearing operated to prevent the judgment of February 14, 1936 from becoming final, and upon consideration of said petition for rehearing and during one of the days of the April Term, A. D. 1936 of this Court, to-wit, on April 24, 1936, the Court denied said petition for rehearing and on said last mentioned date a judgment of this Court affirming the judgment of The Municipal Court of Chicago then and there became a final judgment.

3. In the Municipal Court of Chicago this appellant contended that the ordinance on weights and measures, the violation of which was charged in the court below, violates Article II, Section 2, relating to the due process of law of the Constitution of the State of Illinois, and violates Section 1 of the Fourteenth Amendment to the Constitution of the United States (Unprinted Record 81-82; Abst. 27).

4. Pursuant to Rule 39 of the Supreme Court of Illinois (361 Ill. xix), appellant in his brief filed in said cause in the Supreme Court of Illinois assigned among "Errors Relied On", the following:

"5. Section 2947 of the Revised Chicago Code of 1931 is invalid and unreasonable as applied to coal shipped in truck load lots from the mine outside Chicago to the consumer within the City of Chicago.

"6. Section 2947 of the Revised Chicago Code of 1931 is unconstitutional as applied to coal shipped in truck load lots

from the mine outside Chicago to the consumer within the City of Chicago because it is (a) unreasonable, (b) deprives the defendant of liberty and property without due process of law in violation of Article II, Section 2, of the Illinois constitution, and (c) deprives the defendant of the equal protection of the laws and of liberty and property without due process of law in violation of the first section of the Fourteenth Amendment to the Constitution of the United States."

5. By his brief and reply brief said appellant duly argued that said Section of the ordinance involved was in violation of the Constitution of the United States in the particulars [fol. 120] stated in such assignment of errors, and the opinion of the majority of the Court, written by Mr. Justice Herrick and filed in this cause on February 14, 1936, reported under the name of City of Chicago v. Waters (363 Ill. 125, 1 N. E. (2d) 396), expressly passed upon and overruled the contentions of said appellant in the following language:

"It is here urged that by reason of these requirements, as applied to the defendants, the ordinance is unreasonable, deprives the defendants of the equal protection of the law and deprives them of liberty and due process of law, in violation of section 1 of the fourteenth amendment to the Federal constitution and of section 2 of article 2 of the Illinois constitution."

* * * * * * *

"The ordinance is not unreasonable and is not susceptible to the charges lodged against it of being a violation of the provisions named of the State and Federal constitutions."

6. Section 237 (a), as amended February 13, 1925, of the Judicial Code of the United States provides (28 U.S.C.A., par. 344):

"(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant

to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

7. The Supreme Court of the United States has construed the words "statute of any State," contained in the above sub-section, as meaning and including a municipal ordinance enacted pursuant to power granted to such municipality by the law of the state: John P. King Mfg. Co. v. City Council of Augusta (1928) 277 U. S. 100, 72 L. Ed. 801.

[fol. 121] 8. The ordinance involved in the present case was passed by the City Council of the City of Chicago pursuant to Sections 1, 54, 55, 56 and 102 of Article V of "An Act to provide for the incorporation of cities and villages," as amended [Ill. State Bar Stats. (1935) c. 24, "Cities, Villages and Towns," pars. 65 (1), 65 (54), 65 (55), 65 (56) and 65 (102)].

9. For the reasons stated above, the final judgment entered herein is a judgment in the highest court of Illinois in which a decision in the suit can be had and there was drawn in question in said suit the validity of a statute of the State of Illinois, to-wit, the ordinance of the City of Chicago respecting the regulation of weights and measures enacted pursuant to statutes of the State of Illinois, on the ground of its being repugnant to the Constitution of the United States and the decision of the Supreme Court of Illinois was in favor of its validity, and therefore, under the Judicial Code of the United States in effect prior to January 31, 1928, the appellant would have been entitled to have said judgment reviewed by the Supreme Court of the United States on writ of error.

10. On January 31, 1928 the Congress of the United States passed the following act, as amended April 26, 1928, (28 U.S.C.A., Sections 861a and 861b):

"861a. The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

"861b. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which section 861a of this title substitutes for a writ of error."

That, therefore, in accordance with said Section 237 (a) of the Judicial Code of the United States and in accordance with the Rules of the Supreme Court of the United States, [fol. 122] your petitioner respectfully shows your Honor that the case is one in which under the legislation in force when the said Act of January 31, 1928 was passed, to-wit, under Section 237 (a) of the Judicial Code of the United States, a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

11. It is provided by the laws of the United States (U. S. Code, Title 28, Section 350), among other things, that:

"No writ of error, appeal, or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree, * * *."

12. It has been held by the Supreme Court of the United States that the three months period within which an appellant may make application for the allowance of an appeal to the Supreme Court of the United States commences to run from the date when the judgment of the highest State court in which a decision could be had becomes final, and that the pendency of a seasonably filed petition for rehearing suspends the commencement of such period until such petition for rehearing is denied: Gypsy Oil Co. v. Escoe, 275 U. S. 498, 72 L. Ed. 393, 48 Sup. Ct. Rep. 112; so that the present petition for the allowance of an appeal is within apt time under the statutory provision referred to in the next preceding paragraph.

13. The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assign-

ment of errors filed herewith, pursuant to Rules 9 and 46 of the Rules of the Supreme Court of the United States, and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States to review the judgment of the Supreme Court of Illinois by this ap-
[fol. 123] peal, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

Wherefore, your petitioner prays for the allowance of an appeal from the said Supreme Court of the State of Illinois, the highest court of said State in which a decision in this cause can be had, to the Supreme Court of the United States in order that the decision and final judgment of the Supreme Court of the State of Illinois may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Illinois under his hand and the seal of said Court, may be sent to the Supreme Court of the United States within forty (40) days from the allowance of this appeal, as provided by law, and that an order may be made touching the security to be required of the petitioner and that the supersedeas bond tendered by the petitioner be approved, and that upon the approval of said bond this appeal may operate as a supersedeas.

Thomas C. McConnell, Owen Rall, Attorneys for Petitioner.

May 25, 1936.

[fols. 124-126] [File endorsement omitted.]

[fol. 127] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed May 29, 1936

The petition of Marcus Hauge, the appellant in the above entitled cause for an appeal to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Illinois entered herein on February 14, 1936,

which became final by the denial of said appellant's petition for rehearing on April 24, 1936, having been filed with the Clerk of this Court and presented herein, accompanied by assignment of errors and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered;

It is Hereby Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the final judgment dated the 14th day of February, 1936 of the Supreme Court of the State of Illinois, which became final on April 24, 1936, as prayed in said petition, and that the Clerk of the Supreme Court of the State of Illinois shall within forty (40) days from this date make and transmit to the Supreme Court of the United States under his hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by præcipe [fol. 128] or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is Further Ordered that said appellant shall give a good and sufficient supersedeas bond in the sum of Five Hundred Dollars ($500.00), that said appellant shall prosecute said appeal to effect and answer all damages and costs if he fails to make his plea good, and that said supersedeas bond, when filed and approved, shall stay the sending down of the mandate herein and of all proceedings in this cause until the final disposition of this cause by the Supreme Court of the United States.

Comes now the appellant, Marcus Hauge, and presents his supersedeas bond conditioned in accordance with the foregoing order and in accordance with the statutes of the United States of America, and the undersigned having examined the said bond and the sufficiency of the surety or sureties signing said bond, finds the same to be proper in all respects and has approved the same and hereby orders that the same is approved and shall be filed by the Clerk of this Court and shall operate as a supersedeas herein.

Enter this 29th day of May, A. D. 1936.

Clyde E. Stone, Chief Justice of the Supreme Court of the State of Illinois. (Seal.)

[fol. 129] [File endorsement omitted.]

[fols. 130-134] Supersedeas bond on appeal for $500.00, approved and filed May 29, 1936, omitted in printing.

[fols. 135-145] Citation, in usual form, showing service on Barnet Hodes et al., filed June 8, 1936, omitted in printing.

[fol. 146] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF FILING PRÆCIPE—Filed June 8, 1936

To City of Chicago, Appellee, and Honorable Barnet Hodes, Corporation Counsel, Attention: Martin H. Foss, Esquire, Assistant Corporation Counsel, City Hall, Chicago, Illinois:

Pursuant to Paragraph 2 of Rule 10 of the Supreme Court of the United States, we hand you a copy of appellant's præcipe for transcript of record in the above entitled cause to be prepared by the Clerk of the Illinois Supreme Court, the original of which præcipe we shall file with said Clerk within three (3) days.

Thomas C. McConnell, Owen Rall, Attorneys for Appellant.

Received a copy of the above notice and of the appellant's præcipe for transcript of record therein referred to, this 5th day of June, A. D. 1936.

City of Chicago, Appellee, by Barnet Hodes, Corporation Counsel, by Martin H. Foss, Assistant Corporation Counsel.

[fols. 147 & 148] [File endorsement omitted.]

[fol. 149] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

APPELLEE'S PRÆCIPE FOR ADDITIONAL RECORD—Filed June 13, 1936

To the Honorable Adam F. Bloch, Clerk, Illinois Supreme Court, Springfield, Illinois:

You will please prepare and incorporate into the transcript of record in the above entitled cause on the appeal of appellant to the Supreme Court of the United States the following additional portions of the record in said cause:

1. Joint brief and argument for appellants.
2. Brief and argument for appellee.
3. Joint reply brief and argument for appellants.
4. This præcipe for additional record and proof or acknowledgment of service thereof on appellant.
5. Notice of filing this præcipe, with proof or acknowledgment of service thereof on appellant.

Barnet Hodes, Corporation Counsel; Martin H. Foss, Assistant Corporation Counsel, Attorneys for Appellee.

[fols. 150 & 151] Received a copy of the foregoing appellee's præcipe for additional portions of the record, this 12th day of June, 1936.

Thomas C. McConnell, Owen Rall, Attorneys for Appellant.

[fols. 152 & 153] [File endorsement omitted.]

[fol. 154] [File endorsement omitted]

[fol. 155] IN SUPREME COURT OF ILLINOIS

[Title omitted]

JOINT BRIEF AND ARGUMENT FOR APPELLANTS—Filed September 18, 1935

Statement of the Case

May it please the Court:

These three appeals are from three separate judgments entered by the Municipal Court of the City of Chicago

against the three defendants, respectively, for violating Section 2947 of the Revised Chicago Code of 1931, which in substance provides (Hauge Abst. 38) that every commodity sold in load lots by weight, delivered by truck within the city shall be weighed by a public weighmaster and that a public weighmaster's certificate of weight for each such [fol. 156] load shall be delivered by the driver or person in charge of the truck to the purchaser of such load at the time of the delivery and before any of the commodity is removed from the vehicle.

Another section of the ordinance, Section 3623 (Hauge Abst. 53), provides that the public weighmaster's weight certificate shall state, inter alia, the commodity weighed, the date, the name and address of the purchaser or consignee, and when the commodity is loaded in a vehicle, the total or gross weight of the commodity weighed and the conveyance in which it is loaded, the tare weight or the weight of the vehicle, and the net weight of the commodity contained in such vehicle. This section also provides (Hauge Abst. 53-54):

"In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein • • •"

If valid, the effect of the two sections mentioned is to require that coal shipped into the City of Chicago by truck direct from the mine to the Chicago consumer, although weighed at the mine on State-tested scales, be unloaded inside of the city limits of Chicago so that the truck can first be weighed empty by a public weighmaster and then reloaded so that both truck and coal can be reweighed by the same public weighmaster for the purpose of making the certificate described in Section 3623 and required by Section 2947, of which the defendants stand convicted of violating.

The coal being delivered by the defendants in the instant cases was from the mine of the Morris Coal & Mining Company, at Morris, Grundy County, Illinois, and had been weighed there over State inspected scales (Hauge Abst. 22-26; Waters Abst. 14-15; Gorman Abst. 14-15.

[fol. 157] It was not and is not contended that these defendants were possessed of public weighmaster's weight

certificate as required by this ordinance. The prosecutions were defended in the lower court on the ground that the ordinance itself as applied to the facts in these cases is unconstitutional in that it is unreasonable in its provisions in requiring the reweighing of coal already weighed in accordance with the State laws and in that it discriminates against non-resident coal dealers, miners or operators and is so unreasonable in its terms as not to be authorized by the Enabling Act under which it was enacted (Hauge Abst. 26-35; Waters, 15; Gorman, 15).

The Honorable Frank M. Padden, Presiding Judge, has certified that the validity of a municipal ordinance is involved in these appeals and that in his opinion the public interest requires a direct appeal to the Supreme Court (Hauge Abst. 3-4; Waters, 5; Gorman, 5).

The section of the ordinance involved is the same in each of the three pending cases; the three cases were tried on the same day by Judge Padden without a jury; by stipulation certain evidence in the first case tried (Marcus Hauge) stood as evidence in the other two cases, and in many other respects the records in the three cases are identical. By an order entered in this Court, leave has been granted these appellants to file a joint brief and argument. The printed abstract filed in the Hauge case is complete and for sake of brevity the other two abstracts make certain cross-references to it. For this reason, the Hauge abstract alone is frequently referred to in this brief, and is referred to first where all three abstract references are given herein.

The evidence in the instant case disclosed that all three of the defendants below are coal truckers owning their own trucks (Hauge Abst. 17; Waters, 14; Gorman, 13). They are not engaged in the business of selling coal [fol. 158] (Hauge Abst. 21; Waters, 14; Gorman, 14). As already stated they trucked the coal in question from a mine owned by the Morris Coal & Mining Co. located in the City of Morris and delivered this coal to customers of that mine resident in the City of Chicago. In each instance the coal was weighed over state inspected scales at the mine in Morris (Hauge Abst. 24; Waters, 11, 14-15; Gorman, 11, 15). These scales were certified as accurate by the Inspector of Weights and Measures of the State of Illinois (Hauge Abst. 24; Waters, 14-15; Gorman, 15) and the delivery ticket

furnished to these defendants by the mine showed the gross, tare and net weight of the coal in each load (Hauge Abst. 14-15; Waters, 12-13; Gorman, 12-13).

All of the requirements of the State Statutes with reference to the sale of coal were complied with. (See Ill. State Bar Stats. 1935, Chap. 147, Secs. 5, 7, 8, 20.) The coal itself was sold F. O. B. the mine and the defendants were not employed by the mine but are independent contractors and collected their charge for the carrying of this coal as a separate item from the purchasers (Hauge Abst. 23-24; Waters, 14; Gorman, 14). It was further shown that the Morris Coal & Mining Co. could not obtain a license as a Public Weighmaster from the City of Chicago (Hauge Abst. 24). The reason for this is apparent in that the Company was resident outside the City of Chicago and, therefore, not subject to or embraced within the provisions of the Municipal Ordinances of the City of Chicago.

The evidence showed that if coal which has been weighed at the mine is required to be unloaded and weighed again inside the city limits of Chicago in compliance with the Chicago ordinances mentioned, the additional cost to the Chicago customer would be from fifty cents to seventy-five [fol. 159] cents per ton, and in some cases a dollar a ton (Hauge Abst. 24-25). This extra charge would be occasioned by the labor involved in unloading the coal from the truck in order to weigh the truck empty (thus getting "the tare") and then in reloading it again and weighing loaded—all before delivering it to the customer. It is also apparent that such rehandling of the bituminous coal which comes from the northern Illinois fields tends to break up the coal and destroy the grading which has been made at the mine tipple.

No charge of short-weight is involved in the present proceedings. Hauge testified (Hauge Abst. 18) without dispute that the inspectors who arrested him told him "they knew our weights were right and they didn't want to bother us with" reweighing.

Ralph C. McElvain's testimony in each case (Hauge Abst. 25) was that they had had no complaints from their customers as to short weights.

Frank Gorman testified in his case, without dispute, that the inspectors reweighed his two ton load and found it 450 pounds overweight (Gorman Abst. 14).

These cases therefore present technical violations of this ordinance, but the question raised is one of public importance far beyond the rights of these individual defendants.

We submit that if this ordinance is held valid, the consumers of coal in the City of Chicago will be unnecessarily deprived of cheap fuel and the competitive influence which such fuel has upon other coal prices, and the miners and dealers in coal not resident in the City of Chicago will be deprived of a home market for the commodity with the result that they and their employees are discriminated against in favor of local coal merchants in the City of Chicago and [fol. 160] indirectly in favor of employees and mine owners outside the State of Illinois. And we submit that no justification exists for such a result, because the protection of citizens of Chicago against short weights, which is the sole object of the ordinance which can be recognized as constitutional, does not require the drastic measure here sought to be applied to coal sold in load lots directly from the mine.

The evidence further disclosed that the sales of coal here involved took place in Morris and that the City Sealer of the City of Chicago is attempting to interfere with property owned by the purchasers of such coal under the guise of enforcing an ordinance.

Errors Relied On

1. The Court below erred in holding that the ordinance in question is reasonable and valid.

2. The Court below erred in refusing to rule that the burden of proof was on the plaintiff, City of Chicago, to show that the sale of coal involved in these proceedings to the persons receiving said coal from the defendants' trucks took place within the corporate limits of the City of Chicago.

3. The Court below erred in refusing to find that the title to the coal involved in these proceedings passed to the purchasers upon its being loaded in trucks at the mine in Morris, Illinois.

4. The Court below erred in entering judgments in favor of the appellee and against these appellants.

5. Section 2947 of the Revised Chicago Code of 1931 is invalid and unreasonable as applied to coal shipped in truck load lots from the mine outside Chicago to the consumer within the City of Chicago.

[fol. 161] 6. Section 2947 of the Revised Chicago Code of 1931 is unconstitutional as applied to coal shipped in truck-load lots from the mine outside Chicago to the consumer within the City of Chicago because it is (a) unreasonable, (b) deprives the defendant of liberty and property without due process of law in violation of Article II, Section 2, of the Illinois constitution, and (c) deprives the defendant of the equal protection of the laws and of liberty and property without due process of law in violation of the first section of the Fourteenth Amendment to the Constitution of the United States.

[fol. 162] Points and Authorities

I

The ordinance involved is invalid because when applied to trucks carrying coal from mines located outside the City of Chicago to purchasers residing in such city, it imposes unreasonable requirements upon the reweighing of coal necessary to obtain a weighmaster's certificate.

Wisconsin Lime & Cement Co. v. Chicago, 312 Ill. 520.
Ill. State Bar Stats. 1935, Chap. 24 "Cities and Villages", ss. 65 (54), 65 (55), 65 (91).
City of Chicago v. Kautz, 313 Ill. 196.
People v. Bruner, 343 Ill. 146.
Boshuizen v. Thompson & Taylor Co., 360 Ill. 160, 165.
City of Chicago v. Hebard Express Co., 301 Ill. 570.
McCray v. City of Chicago, 292 Ill. 60.
Haskell v. Howard, 269 Ill. 550.
Frost v. City of Chicago, 178 Ill. 250.
Toledo, Wabash & Western Ry. Co. v. City of Jacksonville, 67 Ill. 37.
Revised Chicago Code, 1931, ss. 2939, 2947, 2950, 2951, 2953, 3342, 3445, 3623.

[fol. 163] II

The ordinance in question can only regulate a sale or delivery of coal when the title to the coal passes to the purchaser within the territorial limits of the City of Chicago and in the instant case the coal involved in the proceeding was appropriated to the contract in Morris, Illinois and then and there became the property of the buyer and therefore this ordinance has no application.

Ill. State Bar Stats., 1935, c. 121a, "Sales" secs. 22, 49.
Gass and Vestal v. Corporation of Greenville, 36 Tenn. 62.
Rex v. Woolatt, 11 Ont. L. Rep. 544.
City of Lamar v. Weidman, 57 Mo. App. 507.
People v. Young, 237 Ill. 196.
City of Chicago v. DiSalvo, 302 Ill. 85.
People v. Hilltop Mining Co., 300 Ill. 564.
City of Carrollton v. Bazzette, 159 Ill. 284.
Town of Cortland v. Larson, 273 Ill. 602.

[fol. 164] Argument

I

The ordinance involved is invalid because when applied to trucks carrying coal from mines located outside the City of Chicago to purchasers residing in such city, it imposes unreasonable requirements upon the reweighing of coal necessary to obtain a weighmaster's certificate.

Section 2947 of the ordinance in question provides (Hauge Abst. 38):

"Every load of any commodity, produce or other article or articles of merchandise sold in load lots by weight, delivered by wagon, truck or other vehicle within the city, shall be weighed by a public weighmaster; a certificate of weight for each such load, issued by such public weighmaster, shall be delivered by the driver or person in charge of the wagon, truck, or other vehicle used in the delivery, to the purchaser or consignee of such load, or to his or their agent at the time of the delivery and *before any of the commodity, produce or other article or articles of merchandise is removed from the vehicle* * * *." (Italics ours.)

In order to obtain such a certificate from a public weighmaster, the weighing must take place in accordance with Section 3623 of the ordinances which provides among other things, (Hauge Abst. 53-54):

"In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein; * * *."

[fol. 165] Said Section 3623 also provides (Hauge Abst. 53,), that the certificate shall certify:

"the kind of vehicle and the name and address of the purchaser or consignee of the commodity weighed; when the commodity is loaded in a vehicle, the total or gross weight of the commodity weighed and the conveyance in which it is loaded, together with the driver and any other person who may be on the vehicle when weighed, and of the horses, if a horse-drawn vehicle and the horses are weighed; the tare weight or the weight of the vehicle, including driver and any other person who may have been on the vehicle when weighed while loading and including the horses if they were weighed when the loaded vehicle was weighed; the net weight of the commodity, produce, article or articles contained in such vehicle, or the net weight of the commodity, produce, articles or articles when not contained in a vehicle at the time of weighing * * *."

These sections of the Revised Chicago Code of 1931, therefore, require that after coming within the city limits (where alone a public weighmaster may be found) the coal here involved be unloaded from the truck and the truck weighed to obtain the tare weight and then reloaded and the truck and coal weighed together to obtain the gross weight, and the net weight is then obtained by subtracting the tare weight from the gross weight. As the certificate requires the certification of all these weights before delivery to the customer, the reweighing operation and the consequent rehandling of the coal must take place between the time that the truckers enter the territorial limits of the City of Chicago and the time the coal is delivered to the customer.

In the case of Wisconsin Lime & Cement Co. v. Chicago, 312 Ill. 520, the section of the Chicago ordinance here in

question, requiring a public weighmaster's certificate, was [fol. 166] held to be valid and reasonable as applied to the business of a coal dealer operating out of coal yards located within the territorial limits of the City of Chicago. In that case this Court held the ordinance reasonable as applied to that state of facts because it found (page 524):

"The ordinance is liberal in permitting dealers themselves to be appointed weighmasters or have their own employees appointed deputies, for their own convenience."

In the instant cases, the proof shows that the Morris Coal & Mining Co. can not obtain a weighmaster's certificate because it is not within the territorial limits of Chicago (Hauge Abst. 22). These individual non-resident defendants likewise and for the same reason would be unable to meet the requirements of obtaining a weighmaster's certificate from the City of Chicago.

The same ordinance operates much more harshly—and as we shall show, unnecessarily so—in the present instances than it did in the Wisconsin Lime & Cement Co. case. The facts to which the ordinance is applied differ in the present three cases from the facts in that case; furthermore, there has been a marked change in business methods of distributing coal since that decision.

The trucking of coal into cities such as Chicago is a fairly recent development and has created a new method of marketing and selling coal. While it threatens the high price charged by coal dealers located within such cities, it makes available large deposits of cheap fuel to the citizens of such cities and makes available city markets to the mine operators of this state. It is a matter of common knowledge that there exists within trucking distance of the City of Chicago numerous "strip" mines where coal can be [fol. 167] cheaply mined adjacent to the highways of this state and trucked into the City of Chicago. There is, therefore, available to the residents of such city large deposits of cheap fuel unless local coal dealers are able to maintain the embargo which the present ordinance places against truck load shipments from the mines. The coal operators owning and mining such coal, with the development of hard roads, are able to deliver this coal to consumers in Chicago by truck and thus save to the consumer the large freight charges incurred when coal is brought in from outside the

State of Illinois. The combined saving to the consumer of coal occasioned by "strip" operations and cheap transportation by truck and the consequent avoidance of a dealer's handling charges are as herein pointed out in a large part unnecessarily nullified by the application of the terms and provisions of the ordinance in question.

The ordinance here in question is designed for the sole ostensible purpose of protecting the consuming public from short weight. It was not designed to prevent the creation of new marketing methods or to protect an established practice of doing coal business. It was passed by the City of Chicago under Article V of the Cities and Villages Act (Ill. State Bar Stats. 1935, Chap. 24, ss. 65 (54), 65 (55), 65 (91)), empowering the City Council "to regulate the inspection- weighing and measuring of brick, lumber, firewood, coal, hay, and any article of merchand-se * * * to provide for the inspection and sealing of weights and measures * * * to tax, license and regulate * * * public scales, * * *."

Under this enabling act the City Council is only granted power to pass an ordinance for the purpose of protecting, and not for the purpose of penalizing, the general public. [fol. 168] In the case of Wisconsin Lime & Cement Co. v. Chicago, 312 Ill. 520, already mentioned, the situation was in no respect similar to the case presented here. In that case no reweighing of coal was involved. In that case the Wisconsin Lime & Cement Co. was refusing to have its coal weighed by a public weighmaster, although the coal was originally loaded in the City of Chicago and although the company itself could become a public weighmaster. In the instant case a valid weighing has been had in compliance with State statutes in effect at the place (Morris) where the coal is appropriated to the contract of sale. The ordinance in question without securing any corresponding advantage for the public when applied to the facts shown in the instant case, compels a rehandling of the coal so that a tare weight can be established in accordance with an ordinance in effect at the place of delivery (Chicago) and before its delivery.

In the later case of City of Chicago v. Kautz, 313 Ill. 196, this Court held (p. 203) that a section of the ordinance in question which attempted to give the city officials power

to reweigh coal which had already been weighed was unreasonable and was

"entirely foreign to the subject of providing and maintaining accurate standards of weights and measures. It authorizes interference with the orderly conduct of a lawful business when there is no reasonable ground for suspecting that the law is being violated or the public welfare threatened. It is an abridgement of the privileges and immunities of the citizen without any legal justification, and it is therefore void."

This Court further said at page 202 of its opinion:

"At no place in the Statute is the authority given to direct the re-weighing of a load of coal which has been weighed by a person authorized to do the weighing on an approved scale."

[fol. 169] In the instant cases the coal involved was weighed over state-inspected scales and there is no reason to suppose and no presumption can be indulged that state inspectors are more lax or less efficient than city inspectors or that a weighing over state-inspected scales does not afford as much protection to the public as weighing over a city-inspected scale. The public in the instant case is further protected by the ordinance provisions, hereinafter pointed out whereby any purchaser can demand a weighing over a city-inspected scale (Sec. 2951; Hauge Abst. 40) and by the provisions of the ordinance providing for the prosecution and fining of any person guilty of delivering short weight (Secs. 2953, 3343; Hauge Abst. 41-42, 46-47).

Merely because this Court has ruled on the reasonableness of an ordinance as applied to a particular set of facts or a given situation does not preclude a determination of whether or not such ordinance is reasonable when applied to another situation and another set of facts, particularly when social or economic changes have taken place since such case has been decided or a new method of doing business has developed. (People v. Bruner, 343 Ill. 146, Boshuizen v. Thompson & Taylor Co., 360 Ill. 160, 165.)

The law is well settled, as stated by this Court in the case of City of Chicago v. Kautz, 313 Ill. 196, 202:

"While a city has, under its general charter power to enact ordinances of a regulatory nature, authority to pass

all necessary police ordinances to carry into effect these regulations, such regulatory ordinances must be reasonable and must not unnecessarily contravene the natural rights of individuals affected by them. Under the guise of police regulations the personal rights or liberties of citizens cannot be arbitrarily invaded."

[fol. 170] See also:

City of Chicago v. Hebard Express Co., 301 Ill. 570.
McCray v. City of Chicago, 292 Ill. 60.
Haskell v. Howard, 269 Ill. 550.
Frost v. City of Chicago, 178 Ill. 250.
Toledo, Wabash & Western Ry. Co. v. City of Jacksonville, 67 Ill. 37.

In the instant case, the proof shows a valid weighing under the State Statutes over state-inspected scales at Morris, Illinois (Abst. 24). As pointed out in the statement of this case at the beginning of this brief, to obtain a weighmaster's weight certificate of the City of Chicago, the defendants here would be required to reweigh the coal within the city limits of Chicago and unload and reload the coal in the process of such reweighing. The cost of the labor involved in this operation must be borne by the consumer and, therefore, it is apparent that Chicago coal merchants operating out of yards located in the City of Chicago are able to maintain a price above the normal competitive price level to the extent of the cost entailed in this operation. This, we submit, is an unreasonable charge against the people of Chicago for protection against short weights because as hereinafter pointed out there is a reasonable method of protecting such consumers which does not necessitate the costly operation above described.

When all the provisions of the ordinance are read, it is quite clear that the purchasers of coal in the City of Chicago are adequately protected from short weighing by other provisions of the ordinance which are not unreasonable and which do not impose an unreasonable burden upon [fol. 171] the persons engaged in this business and upon the consumer of this coal. Thus, Section 2950 of the city ordinances provides (Hauge Abst. 38-40):

"It shall be the duty of such person, firm or corporation delivering such load and of the driver or person in charge

of the vehicle used in the delivery thereof, upon the request of the inspector of weights and measures or of any of his deputies or the consignee or purchaser, to convey such load to some scale selected by the inspector of weights and measures or such deputy or such consignee or purchaser and permit the weighing of the gross weight of such load, and, after the delivery of such load, to return forthwith with the vehicle and equipment used in the delivery thereof to the same scale and permit the ascertaining of the tare weight for the purpose of verifying the net weight of such load as shown by the weight certificate, * * *"

To this provision there can be no objection because its enforcement does not require the unloading or reloading of the coal, before delivery. This section provides a reasonable method for determining the net weight, that is, permits the weighing of the coal and vehicle together before delivery of the coal and the return after the delivery to the scale to determine the tare weight, i. e., the weight of the empty vehicle.

The vice of Section 2947 of the ordinances, as applied to the coal sold from a mine outside the City of Chicago, is that the delivery ticket required must prior to the delivery, show the tare weight, therefore making it imperative that the trucker dump the load, weigh the truck empty and then reload and reweigh loaded before delivering the coal. This, we submit, is an unreasonable restraint on a legitimate business, namely, the sale and shipment of coal by truck direct from mine to the consumer, and in practical effect places an embargo upon coal trucked into the city. [fol. 172] The City of Chicago is thereby deprived of natural resources adjacent to the city limits and state coal operators are deprived of the Chicago market all with no corresponding advantage to the consumer that could not be obtained merely by a change in the ordinance in either of the two following ways: (1) by providing that each truck should carry its certified tare weight marked on the vehicle by a public weighmaster or (2) by providing that after having truck and load weighed, the driver might deliver the coal, returning to the same public weighmaster at once with the empty truck to have the tare weight of his truck determined after such delivery. Either of these two methods would be reasonable and would give the consumer

all the advantage of the present ordinances without discriminating against the out-of-town trucker in favor of the local coal dealer. Since there is a reasonable method of exercising the police power which imposes no undue burden upon the citizen another method to accomplish the same result which does impose such burdens must be held unreasonable.

The requirement that net and tare weights must be officially determined prior to delivery, although the truck is already loaded, is inferentially recognized as unreasonable by the Chicago city council because under all other sections of the ordinance dealing with the official verification or determination of net and tare weights after a commodity is loaded, such weights may be determined after the delivery of the load to the purchaser. (See Sections 2939, 2950, 2951, 3342, and 3445; Hauge Abst. 37, 38, 40, 43, 48.)

It is significant that in each of such sections a method of reweighing the coal, or other commodity, to determine whether or not short weights exist is provided which does not involve rehandling the coal. Under the above sections the requirement contained in Section 2947 (here under [fol. 173] consideration) that net and tare weights must be verified prior to delivery is inferentially recognized as unreasonable by the city council by providing in every other instance for the determination of these weights by weighing the empty vehicle after the delivery of its contents has been made to the purchaser thereof.

The departure in the instant case from this clear manifestation of the intent of the city council as to what constitutes a reasonable method of reweighing is the provision contained in Section 3623 of the ordinance which provides, (Hauge, Abst. 53-54):

"In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight specified herein; * * *"

This section applied to the facts in the instant case and taken in conjunction with the provisions of Section 2947 (Hauge, Abst. 38) means, as already pointed out, that the defendants convicted in this case must dump their loads upon arriving in Chicago, permit the weighing of the truck

empty to get the tare weight, then reload their trucks to get the gross weight even though they have had a valid weighing in Morris and have been provided with a delivery ticket as provided by the Statutes of the State of Illinois. This is unreasonable since a reasonable method exists of verifying the weights which does not involve this onerous burden.

To summarize: the ordinance here is unreasonable because there is a reasonable method, as shown by the other sections of the same ordinance which have been cited, to obtain net, tare and gross weights to protect the consumers from short weighting without compelling the rehandling of the coal inside the City of Chicago and before delivery. There is no reason for assuming that the weights of the [fol. 174] truckers' trucks would vary more than the 1% allowed by ordinance between trips from Morris to Chicago and an ordinance could provide that the truck be weighed by a public weighmaster and its tare weight certified and exhibited on the truck itself.

It is submitted that the cost involved in complying with the section in question demonstrates its unreasonableness because such unnecessary cost imposes a burden upon commerce and operates for the protection of Chicago coal dealers and against the interests of the general public in that it relieves the coal dealer from competition which the consumer is entitled to. It operates to the prejudice of these defendants in imposing an unlawful restriction on the perfectly lawful business of hauling coal direct from mine to customer.

II

The ordinance in question can only regulate a sale or delivery of coal when the title to the coal passes to the purchaser within the territorial limits of the City of Chicago and in the instant case the coal involved in the proceeding was appropriated to the contract in Morris, Illinois and then and there became the property of the buyer and therefore this ordinance has no application.

The testimony shows that the defendants, Hauge, Gorman and Waters owned their own trucks (Hauge, Abst. 17; Waters, Abst. 14; Gorman, Abst. 13); that they received orders at the mine at Morris, Illinois to truck coal to its

customers (Hauge, Abst. 23). For this trucking they received $2.50 a ton (Hauge, Abst. 17, 18) and made no claim to the moneys received for the coal but remitted it to the mine either directly or indirectly through its brokers (Hauge, Abst. 21, 26).

[fol. 175] The entire transaction was described by Hauge when he testified (Hauge, Abst. 21) that he went to the mine every morning and waited for an order for a load. The only money he received was from the customer of the mine and of that money he deducted his trucking charge and remitted the balance. He was, therefore, acting as a collecting agent for the mine but he was employed and paid by the customer for the trucking (Hauge, Abst. 22). The delivery of the coal was F. O. B. the mine in Morris (Hauge, Abst. 24). Under the Uniform Sales Act (Ill. State Bar Stats. 1935, Chap. 121a, "Sales", secs. 22, 49) the title to this coal passed to the buyer upon its appropriation to the contract, and this is so whether the buyer chose the carrier or trucker or not. The title to the coal having passed to the buyer before the coal entered the territorial limits of the City of Chicago, any interference with this coal was an illegal interference with the buyer's property and the ordinance could have no application.

In the case of Gass and Vestal v. Corporation of Greenville, 36 Tenn. 62, the court had under consideration an ordinance requiring that "all hay that is bought and brought within the limits of said corporation, to be used by persons residing within its limits, shall be weighed on the hay-scales * * *" and providing a fine for its violation. The defendants went outside the city and bought hay for their own use in the plaintiff corporation but not for resale and refused to weigh such hay on the city scales. It was held therein that the ordinance could only be construed to apply to sales made within the corporation. At page 64 the court says:

"It is obvious that the ordinance in question operates upon the *seller* and not upon the *buyer*. No one would be heard to say that it was intended to prohibit a farmer of the county from selling a stack or load of hay, *on his farm*, [fol. 176] to a member of the corporation, without having the same weighed. And, as the ordinance does not operate upon the *buyer*, it is clear that the latter has a perfect right

to haul the hay home for his own use, within the corporation, without being required to have it weighed. To such a case, the ordinance can have no application." (Italics in original.)

And in Rex v. Woolatt, 11 Ont. L. Rep. 544, the defendant was charged with having delivered one ton of coal without having weighed the same on the market scales as prescribed by an ordinance of the municipality of Windsor which required, "that all coal bought, sold, or delivered in said city shall be weighed upon the market scales * * *."

The court held that the ordinance would only apply to sales made in the city and we quote this language of the court at page 546 of its opinion:

"It seems to me that this provision must be limited to such articles as are marketed or exposed for sale within the limits of the municipality, and it cannot have been intended by the legislature that where such articles have been the subject of a completed contract of sale made beyond the limits of the municipality and the only act done within it is the delivery, there should be the right to impose what is practically a tax upon the vendor of the articles."

And see City of Lamar v. Weidman, 57 Mo. App. 507; People v. Young, 237 Ill. 196; City of Chicago v. Di Salvo, 302 Ill. 85; People v. Hilltop Mining Co., 300 Ill. 564.

It has further been established by the decision of this Court that facts such as presented here do not constitute an evasion of a city ordinance. (See People v. Young, 237 Ill. 196.) Furthermore, if this ordinance applies to this transaction, it discriminates unlawfully against non-residents and is invalid. (City of Carrollton v. Bazzette, 159 Ill. 284; Town of Cortland v. Larson, 273 Ill. 602.)

[fols. 177 & 178] The ordinance ought not to be construed to apply to coal unless it is delivered inside the City of Chicago, and also title there passes. The trial court erred, therefore, in holding that title passed inside the City of Chicago and also in holding that the acts here shown by the record were covered by and were a violation of Section 2947 of the Revised Chicago Code of 1931.

We submit, therefore, that the defendants have committed no offense against any valid ordinance of the City of Chicago.

Conclusion

We submit that insofar as the ordinance in question requires a reweighing of coal already weighed over state inspected scales which reweighing involves a rehandling of the coal, such ordinance is unreasonable in its terms and provisions, discriminates against non-residents and is void. Further, that if the coal delivered in the instant case was appropriated to the contract at Morris, then title passed to the buyer and the sale was consummated outside the territorial limits of the City of Chicago and no violation of the ordinance is shown. In either event the conviction of the defendants, Hauge, Gorman and Waters should be reversed.

Respectfully submitted, Babcock, Gilruth, Beck & McConnell, Attorneys for Appellants. Thomas C. McConnell, C. Graydon Megan, Owen Rall, of Counsel.

September 18, 1935.

[fol. 179] [File endorsement omitted.]

[fol. 180] In Supreme Court of Illinois

[Title omitted]

Brief and Argument for Appellee—Filed October 8, 1935

Statement of the Case

May it please the Court:

The above entitled appeals are from three separate judgments entered against the appellants (defendants below), respectively, for violations of section 2947 of the Revised Chicago Code of 1931. There is a separate transcript of record in each case and a separate abstract of record, although the abstract in the Hauge case, No. 23225, purports to be the only complete one. The other two refer to certain portions of the Hauge abstract. The brief filed by appellants is a joint one entitled in all three cases. While

[fol. 181] the cases are similar and involve violations of the same ordinance the defendants are different and the witnesses and facts are different.

The ordinance is one enacted pursuant to the express delegation of authority contained in article V of the Cities and Villages act, giving power to cities in Illinois to regulate the inspection, weighing and measuring of coal and other merchandise, to provide for the inspection and sealing of weights and measures to enforce the keeping and use of proper weights and measures by vendors and to license and regulate public scales. This ordinance has already been examined by this court and in the case of City of Chicago v. Wisconsin Lime and Cement Co., 312 Ill. 520, pronounced reasonable and valid and "most commendable and essential to secure to the purchaser the weight of the commodity purchased and paid for."

The ordinance provides, inter alia, for the creation of an executive branch of the city government to be known as the department of weights and measures (Hauge Abst. 36), for the appointment of a head of the department (Hauge Abst. 37), for the appointment of public weighmasters and their bonding (Hauge Abst. 49, 50), and covers the matters of scales, charges for weighing and the issuance of weight certificates (Hauge Abst. 51, 53). Section 2947 relates to commodities sold in load lots and provides in part as follows (Hauge Abst. 38):

"Every load of any commodity, produce or other article or articles of merchandise sold in load lots by weight, delivered by wagon, truck or other vehicle within the city, shall be weighed by a public weighmaster; a certificate of weight for each such load, issued by such public weighmaster, shall be delivered by the driver or person in [fol. 182] charge of the wagon, truck, or other vehicle used in the delivery, to the purchaser or consignee of such load, or to his or their agent at the time of the delivery and before any of the commodity, produce or other article or articles of merchandise is removed from the vehicle, or such certificates shall be delivered to the inspector of weights and measures, or any of his deputies upon his or their demand."

Section 3623, entitled "Weight certificates" reads as follows (Hauge Abst. 53):

"Each public weighmaster shall issue a weight certificate, signed by him or his deputy, under his official seal, which certificate shall state thereon the following: The commodity, produce, article or articles weighed; the date; the name of the weighmaster or deputy weighmaster who did the weighing; the name and address of the person, firm or corporation for whom the weighing was done; the name of the driver of the vehicle bringing such commodity, produce, article or articles to the scales, or, if the same is not contained in a vehicle, the name and address of the person bringing the same to the scales; where contained in a vehicle, the kind of vehicle and the name and address of the purchaser or consignee of the commodity weighed; when the commodity is loaded in a vehicle, the total or gross weight of the commodity weighed and the conveyance in which it is loaded, together with the driver and any other person who may be on the vehicle when weighed, and of the horses, if a horse-drawn vehicle and the horses are weighed; the tare weight or the weight of the vehicle, including driver and any other person who may have been on the vehicle when weighed while loading and including the horses if they were weighed when the loaded vehicle was weighed; the net weight of the commodity, produce, article or articles contained in such vehicle, or the net weight of the commodity, produce, article or articles when not contained in a vehicle at the time of weighing. In no case shall any public weighmaster state in his certificate [fol. 183] the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein; provided, however, that in the case of a divided load, by which is meant a load containing more than one order for the same or different purchasers or consignees, no penalty shall be imposed under this chapter by reason of the fact that the tare weight shown on the weight certificates is only the original tare weight of the vehicle and equipment before loading if in such case each order has been weighed separately and the net weight of each separate order or delivery is correctly shown on the weight certificate and such correct net weight is delivered."

It is admitted by appellants (Brief and Argument for Appellants, p. 3) that the truckloads of coal which they at-

tempted to deliver to Chicago users had not been weighed by a city of Chicago public weighmaster and that the prescribed certificates of weight had not been used and were not in possession of appellants for delivery to the coal purchasers. The sole ground of defense interposed in the court below and the principal error relied upon by appellants in this court to reverse the judgments was and is that the ordinance is invalid as being unreasonable and not authorized by the powers conferred upon the city in the Cities and Villages act. This was the precise question presented to and decided by this court in favor of the city of Chicago in the case of City of Chicago v. Wisconsin Lime and Cement Co., 312 Ill. 520.

The evidence common to the three cases is that appellants delivered coal in truckload lots to Chicago purchasers which coal was not weighed by a city of Chicago public weighmaster and for which public weighmasters' certificates of weight had not been issued, contrary to the provisions of the above mentioned ordinance; that they [fol. 184] were non-residents of Chicago, Hauge and Waters living in Morris, Illinois (Hauge Abst. 16, Waters Abst. 14), and Gorman at Blue Island, Illinois (Gorman Abst. 13); and that they owned their own trucks (Hauge Abst. 17, Waters Abst. 14, Gorman Abst. 13).

The Hauge Case

In this case the evidence shows that appellant Hauge hauled a load of egg lump coal from Morris, Illinois, to 2005 W. Cermak road, Chicago, Illinois, where he delivered it to a purchaser without a city of Chicago public weighmaster's weight certificate. (Abst. 11, 13) The evidence is somewhat confusing and contradictory but sufficient appears to show that the coal was first sold by the Morris Coal and Mining Company of Morris, Illinois to W. Burgess, an independent coal dealer residing and doing business in Chicago under the name of Northern Coal Company, and that Burgess resold the coal to a customer, one Tresca, residing at 2005 W. Cermak road, Chicago. The bill of the Morris company (Abst. 14) shows that the purchaser from it was W. Burgess. Burgess resold the coal in Chicago to Tresca. (Abst. 20) Hauge testified that he lived in Morris but did not have any office any place; that he got the particular load of coal at Morris, Illinois, from the Morris

Coal and Mining Company's mine. He got orders there to load his truck, sent there through the mine. (Abst. 17) At first he testified that he got the coal from the Morris company mine and paid them for the coal and that he himself sold the coal to the customer (Abst. 17) and that the coal was his coal (Abst. 18) and then in answer to the question, "Did you buy the coal from the Morris Coal and [fol. 185] Mining Company?", he answered: "I get the orders from the mine and I haul it up to the customer." (Abst. 18) He further testified that he collects from the customer and remits to the mine (Abst. 19) or Burgess (Abst. 21), after deducting his hauling charges. (Abst. 18, 19) He did not know the customer Tresca before he delivered the coal. (Abst. 19) He said: "That ticket was given me by a fellow who has an office here, who sends it down. The name of the company or agency here is Burgess. Burgess is connected with himself. He takes the orders from the customers here in Chicago." (Abst. 20) Referring to the bill or delivery ticket of the Morris company, Exhibit 1, (Abst. 14) he said: "The name on here is filled out to Burgess; Burgess' name is on it." (Abst. 20) Showing that Burgess resold the coal Hauge testified: "Burgess has got it made out to Tresca; not this particular bill I got at the mine, but the one he has got is billed out to the customer. This ticket is made out for a full load. I did not deliver a full load to this particular party. There were other customers, either two or three on the same load. I could not remember the name of who else I delivered to besides Tresca at that time. I can't remember now where I delivered the other two loads on that same truck. I delivered two tons to one and one ton to another, four tons altogether. They paid me. I pay Burgess for the coal. The customer pays me for hauling it." (Abst. 20, 21) "I pay Burgess for the coal afterwards. He has an office here in Chicago. The name on his office door is Tropic-Air Coal Company." (Abst. 22)

Ralph C. McElvain, president of the Morris Coal and Mining Company, who lives at Morris, Illinois, testified [fol. 186] on behalf of the appellant that his company sells coal. He said, "We sell coal to the customer. We have trucks around there that deliver the coal and collect for it. They collect the money for the coal, as well as for their own hauling. The customer pays them for hauling and

also pays them for the coal, and they pay us, turn the money back in to us when they get back. Then we also have offices which are brokers for us." (Abst. 22, 23) "Some of the offices send orders down and we get orders too. When we do get orders we turn them over to the trucker and he delivers the coal; that is, any trucker that might come along that does business with us." (Abst. 23) On cross examination he testified: "We do not have any office in Chicago. I know Mr. Burgess. Mr. Burgess has an office here. He does business under only one trade name, Northern Coal Company, and he has a trade name on his coal, which he calls Tropic-Air coal. The previous witness was in error. He got the trade name mixed up with his company. Under that trade name Mr. Burgess advertises here in Chicago for the sale of that coal and he procures some of these potential customers and he sends the orders down to us at the mine. We fulfill the order as sent to us by Mr. Burgess. I don't know whether you would call Mr. Burgess our customer or not. He is a kind of a jobber for us, yes. The names of the people he sends in are right on the ticket. We do not know anything about the customers he sends in. Sure we are concerned about the customer. We are not concerned so far as their credit rating is concerned; we get our money anyway. It is cash. We don't get the cash from Mr. Burgess. The truck driver gets it from the customer. He gives it to us or to Mr. Burgess, according to which is handier. In some cases he [fol. 187] gives it to Mr. Burgess and Mr. Burgess gives it to us. In other cases he gives it right direct to us. Supposing a payment is made direct to us by the trucker, we make a remittance to Mr. Burgess. He gets a jobber's price. Examining the delivery ticket (City's Exhibit 1) in this particular case, the delivery was not made to Mr. Burgess. It was made on Mr. Burgess' order. We billed Mr. Burgess for that. We charged this to Mr. Burgess, evidently. The customer paid for it. In this particular instance Mr. Burgess was not our customer; he was our jobber in the deal." (Abst. 25, 26)

Under this method of doing business, as described by the shifting testimony of the witnesses, appellants and the Morris company contend that the sales and deliveries of coal to Chicago customers are not subject to the city's ordinance although there is nothing in the evidence which shows

that the Morris company has any direct dealings with the customers in these particular cases or even knows them. As the trial judge remarked with reference to the Morris Coal and Mining Company (Abst. 31): "There is nothing indicating there was any privity of contract between the coal company and the customer." The Morris company had no account with any customer (Abst. 26) and there is a notable absence of testimony of any Chicago customer to show that he dealt direct with the mine or made any contract to purchase coal from the Morris company f. o. b. Morris, Illinois, or at any other place outside of Chicago, or had any dealings whatever with that company.

The certificate on the bill or delivery ticket (Abst. 14) to the effect that the coal was weighed by a public weighmaster and the seal attached thereto is a recognized authority of accuracy as prescribed by the Chicago Mu- [fol. 188] nicipal Code, is not supported by but is contrary to the facts shown of record, as the coal was not weighed by a city of Chicago public weighmaster or delivered with a Chicago public weighmaster's weight certificate.

The Waters Case

Appellant Waters was prosecuted and fined for violating the ordinance by delivering a truckload of coal to one Algren at 529 E. 112th street, Chicago, Illinois, without a public weighmaster's weight certificate. (Abst. 11) The bill or delivery ticket (Abst. 12) shows that the coal was purchased from the Grundy Mining Co., 3958 W. 111th street, Chicago, Illinois. The city inspector who follows Waters' truck to the customer's premises testified that Waters told him he was working for the Grundy Mining Company in Mount Greenwood and that the coal was from Morris, Illinois, and that it was weighed there. (Abst. 11) Waters did not know the customer, not even her name. (Abst. 14) There is an absence of testimony showing that Waters had any business dealings with the customer prior to the delivery of the coal or that any agreement had been made between them whereby he was to haul the coal for her and charge her the trucking fee. The bill of the Grundy Mining Co., (Abst. 12) shows that the customer paid a flat price, $18 for three tons, plus tax. It contains no item of trucking charge. Waters testified that the lady at 529 112th street paid him for hauling the coal from Morris.

(Abst. 14) There is nothing to show that the purchase of the coal was made elsewhere than in Chicago where the selling company had its office. Subject to the objection of plaintiff, city of Chicago, that it was not pertinent to the [fol. 189] issues in this case, it was stipulated that McElvain's testimony in the case of City of Chicago v. Hauge, would be the same in this (Waters) case. (Abst. 14) The so-called certificate on the delivery ticket (Abst. 12) which is to the effect that the coal was weighed by a public weighmaster and that the seal is a recognized authority of accuracy as prescribed by the Chicago Municipal Code is not supported by the facts shown of record, but contrary to them and a deceit upon the purchaser, as the coal was not weighed by a city of Chicago public weighmaster or delivered with a Chicago public weighmaster's weight certificate.

The Gorman Case

Gorman was fined $25 for violating the ordinance by delivering a truckload of coal to one Woodard at 4207 S. Parkway, Chicago, Illinois, without a Chicago public weighmaster's weight certificate. He hauled the coal for the Grundy Mining Co., which company gave him the order. (Abst. 14) The bill or delivery ticket shows the Grundy Mining Co. to have its place of business at 3058 W. 111th street, Chicago, Illinois. (Abst. 12) The city inspector who followed Gorman to the premises of the customer testified that Gorman said he was hauling for the Grundy Coal Mining Company and that the coal came from Morris, and that it was weighed at Morris. (Abst. 11) Gorman testified: "The Grundy Mining Company gave me this order. I haul for the Grundy Mining Company." (Abst. 14) There is an absence of testimony showing that Gorman had any business dealings with the customer prior to the delivery of the coal or that any agreement had been made between them whereby he was to haul the coal for [fol. 190] the customer and charge the customer the trucking fee. The bill of the Grundy Mining Company (Abst. 12) shows that the customer paid a flat price, $11.50 plus tax, for three tons of coal. It contains no item of trucking charge. There is nothing to show that the purchase of the coal was made elsewhere than in Chicago, where the selling company had its office. The testimony of Ralph C.

McElvain (clearly irrelevant in this case as it was in the Waters case) was stipulated into the report of proceedings subject to plaintiff's objection that it was not pertinent to the issues in this case. (Abst. 14) The certificate appearing on the bill or delivery ticket (Abst. 12) is the same as that appearing on the bills or delivery tickets in the other two cases and is not supported by but contrary to the evidence of record.

The argumentative s atements contained in the statement of the case portion of appellants' brief and argument, which state (p. 2) that the coal was being delivered from the mine of the Morris Coal and Mining Company at Morris, Illinois, are not supported by the record in either the Waters or the Gorman cases. Neither is the statement found on page 4, that the appellants trucked the coal from a mine owned by the Morris Coal and Mining Company located in Morris, supported by the records in the Waters and Gorman cases. The records in these cases only show that the coal came from Morris, Illinois, and that it was weighed there. The statement as to alleged discrimination in favor of Chicago coal merchants, found on page 5, is not supported by the record in either case and certainly not applicable to the Waters and Gorman cases for the reason that the sales in those cases were made by the Grundy Mining Co., doing business at 3058 W. 111th street, Chicago, Illinois. The statement [fol. 191] found on page 6 that the evidence discloses that the sales of coal took place in Morris is utterly inconsistent with the facts in the Waters and Gorman cases and it is not supported by the record in the Hauge case.

To meet the alleged errors of appellants and to sustain the judgments entered by the municipal court, appellee relies upon the following propositions: (1) The direct appeals to this court are not cognizable; (2) the ordinance involved is valid and authorized under appellee's charter powers; and (3) the ordinance is enforceable as applied to appellants and to the delivery by them of truckload lots of coal in Chicago.

[fol. 192] Points and Authorities

I

The direct appeals to this court are not cognizable.

In cases where the validity of an ordinance is not necessarily involved this court is without jurisdiction to entertain direct appeals.

City of Chicago v. Peterson, 360 Ill. 177.
City of Chicago v. Great Atlantic & Pacific Tea Company, 360 Ill. 620.

The municipal court did not pass upon the validity of the ordinance involved in these cases but merely found that appellants and their business of delivering coal in truckload lots to Chicago customers were subject to the ordinance.

The validity of the ordinance having already been adjudicated and sustained by this court in the case of City of Chicago v. Wisconsin Lime and Cement Company, 312 Ill. 520, it was not involved in the decisions of the lower court and is not now the subject matter of these appeals.

II

The ordinance is valid and authorized under appellee's charter powers.

The statutory authority for the enactment and enforcement of the ordinance is found in the following sections of the Cities and Villages act:

Sections 54, 55, 56, 66, 91 and 102 of article V, chapter 24, Illinois State Bar Statutes, 1935.

[fol. 193] The ordinance has already been examined and its validity sustained by this court.

City of Chicago v. Wisconsin Lime and Cement Company, 312 Ill. 520.

The facts involved in the Wisconsin Lime and Cement Company case are similar to those in the cases now before the court.

The business methods of distributing coal have not changed since 1924, the date of this court's decision. The need to protect coal users from dishonest weights is as

great today as it was in 1924. No reason is shown why this court should depart from its former decision.

Appellants, because they are non-residents of the city of Chicago, are not entitled to be favored over Chicago residents engaged in the business of hauling coal, or entitled to deliver coal in Chicago with less onerous restrictions than those applicable to Chicago dealers.

III

The ordinance is enforceable as applied to appellants.

Appellants and the deliveries by them of truckload lots of coal to Chicago customers come clearly within the terms of the ordinance.

Ordinance section 2947, Hauge Abst. 38.

Appellants were the employees of the sellers of the coal and not of the Chicago customers.

The sales to Chicago users were made in and the title to the coal sold them passed within the city of Chicago.

Delivery to appellant truckers did not pass title to the coal.

Charles v. Lasher, 20 Ill. App. 36.

[fol. 194] Under the Uniform Sales act the property in the coal passed in Chicago when it was delivered to the Chicago users.

Section 19, Rule 5, Chapter 121a, Illinois State Bar Statutes, 1935.

Appellants' authorities distinguished.

Argument

I

The direct appeals to this court are not cognizable.

Though the trial judge has certified (Hauge Abst. 3-4; Waters Abst. 5; Gorman Abst. 5) that the validity of a municipal ordinance is involved in these appeals and that in his opinion the public interest requires direct appeals to this court it sufficiently appears in the records of all three cases that the municipal court did not pass upon the validity of the ordinance but merely found that the

appellants and their business of delivering coal in truck-load lots to Chicago purchasers were subject to the ordinance.

This court has held that in those cases where the validity of an ordinance is not necessarily involved it is without jurisdiction to entertain the appeal.

City of Chicago v. Peterson, 360 Ill. 177.
City of Chicago v. Great Atlantic & Pacific Tea Company, 360 Ill. 620.

Furthermore it is not seen how the validity of the ordinance could have been passed upon by the lower court or now be the subject matter of these appeals in this court [fol. 195] when this court has already adjudicated the validity of the same ordinance. In the case of City of Chicago v. Wisconsin Lime and Cement Company, 312 Ill. 520, this court examined the same ordinance which is now involved in these appeals and pronounced it valid.

II

The ordinance is valid and authorized under appellee's charter powers.

The same ordinance which is involved in these appeals was subject to attack as to its reasonableness and validity in the case of City of Chicago v. Wisconsin Lime and Cement Company, 312 Ill. 520. The Wisconsin company contended that the city had no power, either expressed or necessarily implied, to pass the ordinance, also that the ordinance was unreasonable. In this court's opinion, prepared by Mr. Justice Cartwright, the powers enumerated in article V of the Cities and Villages act were examined and pronounced sufficient to support the ordinance. It was held that the legislative authority conferred upon the city included the authority to provide that commodities sold in loads by weight shall be weighed by a public weighmaster appointed by the city, and included supervision, oversight, control and the prescribing of methods to secure honest weights. On page 522 it is said:

"In buying ordinary articles the buyer generally may see the article weighed or have the means at hand to ascertain whether it is short weight, but when applied to load lots it was and is impossible for the purchaser to determine

the weight of the load. The purpose of the ordinance was most commendable and essential to secure to the purchaser [fol. 196] the weight of the commodity purchased and paid for, * * *."

And on page 523 it is said:

"The power to regulate necessarily includes the power to make the regulation effective and to provide for methods of weighing which will secure truthful weights. The method provided for such regulation is the appointment of a weighmaster required to give a bond and pay a small fee, instead of the weighing being done by the seller, without the knowledge or supervision of anyone or any method of ascertaining whether the scales are correct or the weighing honest. The power to pass such an ordinance is sustained by many decisions."

In concluding its opinion the court said (p. 524):

"There is no legal objection to the ordinance."

It is significant to note that the examination of the abstract and briefs of counsel in the Wisconsin company case (Abst. in that case pp. 22, 23; appellee's brief p. 1) shows that the company maintained coal yards not only in the city of Chicago but in surrounding suburbs and that from its Oak Park yard it delivered into Chicago territory 20% of the total tonnage leaving the yard. Appellants' attempt to distinguish this case, found on page 12 of their brief, as being a case in which the ordinance was held valid "as applied to the business of a coal dealer operating out of coal yards located within the territorial limits of the city of Chicago" is not, therefore, strictly accurate. Neither is it sound argument for appellants to contend that the ordinance declared valid in the Wisconsin Lime and Cement Company case should be declared invalid for the reason that the Morris Coal and Mining Company "cannot obtain a weighmaster's certificate because it is not within the [fol. 197] territorial limits of Chicago." The Morris company and its non-resident truckers have equal rights with residents of the city of Chicago to have coal weigher by city of Chicago public weighmasters.

Counsel for appellants contend on page 12 of their brief that the ordinance operates more harshly upon their clients

than it did in the Wisconsin Lime and Cement Company case and that there has been a marked change in business methods of distributing coal since that decision. They urge that this court's decision is no longer binding and that the ordinance declared valid in the year 1924 is not now valid in the year 1935. There is nothing substantial in this point. While the use of motor trucks for the transportation of many articles of merchandise has increased, motor trucks were used for the carriage of coal in 1924. It was to the application of the ordinance to the hauling of coal in truckload lots that the Wisconsin Lime and Cement Company objected in the case above referred to. We respectfully submit that no social or economic changes have in fact taken place since the Wisconsin Lime and Cement Company case was decided in 1924 which would warrant this court in overruling its decision in that case and in declaring invalid a salutary ordinance designed to "secure to the purchaser the weight of the commodity purchased and paid for."

If this ordinance were declared invalid or as not being applicable to the appellants or the Morris Coal and Mining Company, then such non-residents of the city of Chicago would secure an unfair advantage over the local coal dealers and the Chicago users of coal would be left unprotected in the matter of securing honest weights. This matter of secur- [fol. 198] ing honest weights and protecting the purchasing public against the widespread evil in selling commodities in load lots by weight with short weights or the use of padded weight tickets is of paramount necessity. It overrides the matter of price and also the matter of convenience to non-resident coal dealers or any added cost placed upon them in the form of having their coal weighed by the Chicago weighmasters in order to enable them to compete with the local coal merchants.

Appellants claim that the coal hauled by them was weighed over state inspected scales at Morris, Illinois (appellants' brief, p. 16) and for this reason the purchasers are protected and that the Morris company and its truckers should not be required to reweigh and deliver the coal to Chicago purchasers with city of Chicago weighmasters' weight certificates. It is not seen how this claim can be made in the Waters or Gorman cases as there is no proof in either one of those cases that the coal delivered was

weighed over state inspected scales. The contention is unsound as applied even to the Hauge case. This court will take judicial notice of the fact that Morris, Illinois is sixty-two miles distant from Chicago. It needs no stretch of the imagination to see that almost anything might happen to truckloads of coal, conveyed on a miscellaneous variety of trucks of different owners, while in transit from Morris to Chicago. A portion of the coal might be lost during this long haul or if the drivers were dishonest they might sell portions of it and trade some more of it for gasoline. Fortunately, however, we can turn from these imaginings to the security of this court's decision in the Wisconsin Lime and Cement Company case, which has guaranteed to Chicago purchasers of coal protection against deliveries of [fol. 199] all truckload lots except with city of Chicago bonded public weighmasters' certificates of weight.

Because of the adjudication by this court in the Wisconsin Lime and Cement Company case it seems unnecessary for us to discuss the sources of power upon which the city's ordinance rests. These are found in article V of the Cities and Villages act under section 54, to regulate the inspection, weighing and measuring of coal and any article of merchandise; section 55, to provide for the inspection and sealing of weights and measures; section 56, to enforce the keeping and use of proper weights and measures by vendors; section 66, the police power section; section 91, to tax, license and regulate public scales; and section 102, to pass all ordinances, rules and make all regulations, proper and necessary, to carry into effect the powers granted.

The argument of appellants, which is to the effect that the Morris Coal and Mining Company in order to comply with the city ordinance would be obliged to rehandle its coal in Chicago so that the tare weight might be established, is of little or no materiality to the case. That company is not entitled to any favoritism or advantage over Chicago coal dealers who are obliged to conform to the ordinance. If it wants to compete for business on the Chicago market it should be willing to submit to the local ordinance regulating the conduct of business on that market and not seek to break down salutary measures enacted for the protection of the public. If in order to comply with the city's ordinance it is found necessary to establish its own Chicago coal yard or to submit to a reweighing of its coal,

these are but incidents which it is called upon to work out [fol. 200] if it wishes to enjoy the Chicago business. Certainly it should not be permitted to defeat or evade so important a municipal regulation as appellee's weights and measures ordinance and deprive the public of protection against false weights in order to gain for itself a slight pecuniary advantage over its competitors or even to place itself in a position where it could furnish coal to Chicago users at a less price than that ordinarily paid. There is, however, no evidence in the records which tends to prove that the Morris company undersells Chicago coal dealers.

Appellants cite and place some reliance upon the case of City of Chicago v. Kautz, 313 Ill. 196. As no attempt is made to require appellants to have the coal delivered by them in Chicago weighed a second time over city of Chicago public weighmasters' scales, this case, of course, has no bearing upon the cases now before the court.

The claim that the city of Chicago and its inhabitants would be deprived of natural resources adjacent to the city, and state coal operators deprived of the Chicago market, if and when the city's ordinance is enforced against operators who are non-residents of the city of Chicago, is absurd. We doubt not that Chicago users will continue to get coal from down state sources and that down state coal operators will be accorded the privilege of doing business on the Chicago market as has been done in the past for many years. Manifestly any down state weighing is not a compliance with the city ordinance and would not protect Chicago purchasers against false weights. Manifestly the Morris Coal and Mining Company and the down state truckers of its coal should not be entitled to deliver coal in Chicago with less onerous restrictions than those applicable to Chicago dealers.

[fol. 201] III

The ordinance is enforceable as applied to appellants.

Under point II of the brief and argument for appellants it is contended that the ordinance in question can only regulate sales or deliveries of coal when the title to the coal passes to the purchasers within the territorial limits of the city of Chicago and in the instant cases the coal involved was appropriated to the contracts in Morris, Illinois, and

then and there became the property of the buyers, and therefore this ordinance has no application.

Such a contention as this is unsound and inapplicable to the cases at bar. The records in the Waters and Gorman cases do not warrant its being made, for those records are absolutely devoid of any proof to the effect that the title to the coal delivered passed to the purchasers outside of the limits of the city of Chicago. There is nothing to show in these two cases that the coal was not purchased in Chicago and "was appropriated to the contracts" in Chicago where the selling company had its place of business and the purchasers resided. There is the testimony of the witness Prendergast, (Waters and Gorman Absts. p. 11) the deputy inspector of the city, who said the truckers stated the coal came from Morris and it was weighed at Morris, but this falls short of establishing where the title to the coal in sales made by the Grundy Mining Company, a Chicago concern, passed to its purchasers. In the Hauge case there is evidence that the coal hauled was hauled from Morris, Illinois (Hauge Abst. 17) but there is no evidence as to where the title passed. There is evidence that it was billed to Burgess, a Chicago coal dealer who resold it in Chicago to [fol. 202] Tresca, the user. (Abst. 20) Mr. McElvain, the president of the Morris Coal and Mining Company, said (Hauge Abst. 24):

"That coal is sold, I would say, f. o. b. the mine." This is far short of establishing where the title passed and if it was meant to apply to the sale made by Burgess to his customer Tresca it is contradicted by the evidence to the effect that the coal was first sold by the Morris company to Burgess, an independent coal dealer doing business in Chicago under the name of Northern Coal Company (Abst. 25) and that Burgess resold the coal to Tresca (Abst. 20) and that the only contract between the seller and the Chicago user was between Burgess and the user and that the only seller that the Chicago purchaser knew was Burgess.

Regardless of where the title to the coal may have passed to the purchaser we fail to see that this point has any importance to the issues involved in these cases. The ordinance clearly controls all deliveries of coal made in the city of Chicago in truckload lots regardless of where the title to the coal may have passed. This ordinance has been upheld by this court. It provides in section 2947, with

reference to merchandise sold in load lots by weight, that every load "delivered by wagon, truck or other vehicle within the city, shall be weighed by a public weighmaster; a certificate of weight for each such load, issued by such public weighmaster, shall be delivered by the driver or person in charge of the wagon, truck, or other vehicle used in the delivery, to the purchaser or consignee of such load, or to his or their agent at the time of the delivery and before any of the commodity, produce, or other article or articles of merchandise is removed from the vehicle." (Hauge Abst. 38.)

[fol. 203] Certainly appellants were the agents of the sellers when they collected from them the price of the coal. The records do not support appellants contention that the truckers were the employees of the purchasers and that title to the coal passed to the buyers before the coal came into Chicago. There is not a particle of evidence that the purchasers ever knew of the existence of the Morris Coal and Mining Company or its mine at Morris, Illinois, at the time they ordered coal from Burgess in Chicago or the Grundy Mining Co., in Chicago. The attempt to make the truckers the employees or the agents of the purchaser-users is a sham. It is a self-serving scheme manifestly concocted by the Morris company in its strained effort to avoid the ordinance and deliver its coal to Chicago users without Chicago public weighmasters' weight certificates. The records in all three cases show that the appellant truckers were non-residents of Chicago, did not know the purchasers and that they were engaged and directed by the sellers of the coal. There is nothing to show that any customer knew that any one of these truckers existed previous to his appearance at the purchaser's premises when he was sent there by the seller with a truckload of coal. Up to that time there were no dealings whatever between the customers and the truckers. How then could there have been a relationship of principal and agent or employer and employee at the time the coal companies engaged truckers and directed them to load up and deliver coal to certain addresses in Chicago? The claim that there was in fact such a relationship is unfounded. By simply arguing for self-serving reasons that the truckers, then known only to the sellers and who were engaged by the sellers to haul the coal and collect the charges, were employed by the purchasers

[fol. 204] does not establish or even tend to establish the fact that the truckers were the employees of the purchasers. Appellants failed to produce as a witness any Chicago customer, realizing, we presume, that no Chicago customer would testify that he bought coal outside of Chicago and employed one of the appellants to haul it for him.

The contention that title to the coal passed to the users outside of Chicago is an absurdity. It finds no support in the records and manifestly is advanced for the self-serving purpose of avoiding compliance with the ordinance. There is an absence of evidence tending to show that any one of the Chicago customers had any dealings with the Morris Coal and Mining Company at the time the coal was ordered from Burgess in Chicago in the Hauge case or from the Grundy Mining Company in Chicago in the Waters and Gorman cases or that any one of the purchasers had ever heard that there was in existence such a company as the Morris Coal and Mining Company or even that there were coal mines at Morris, Illinois. How could contracts be made at Morris, Illinois or outside of Chicago if there were no contracts between the purchasers and some party or parties outside of Chicago or at least some knowledge on the part of the purchasers that they were dealing with a coal company located or having a mine outside of Chicago? The statement in appellants' brief that the title to the coal passed to the Chicago customers before the coal entered the territorial limits of the city of Chicago is, therefore, just a self-serving statement and not supported by the facts in the cases.

Furthermore, as a legal proposition delivery to a trucker or drayman is not regarded as delivery to a common carrier so as to pass title to the goods sold. Such was the [fol. 205] holding of the Appellate Court of Illinois, First District, in the case of Charles v. Lasher, 20 Ill. App. 36. In order to make the truckers in these cases the agents of the Chicago coal users it would be necessary to show that the customers had designated them to act as their agents. This has not been shown in either of the cases before the court and we contend that in the absence of such showing the municipal court was right in holding that the title passed inside the city of Chicago. If inhabitants of Chicago were to order loads of coal from a coal company having its principal place of business in Chicago (such are the facts in the

Waters and Gorman cases) and this were the extent of the dealings between the parties, it could not afterwards successfully be claimed that the private carriers engaged by the seller to haul the coal were the employees of the purchasers or that the purchasers had knowledge that the coal was not then in Chicago but came from outside of Chicago or that the purchasers were to take title to it at some place outside of Chicago. Appellants' counsel seem to argue without giving any thought to the matter of the intention of the purchasers. In the event the truckers engaged by the sellers to haul the coal misappropriated it or the coal were lost in transit and the purchasers never received it, would anyone imagine that any court would hold that the purchasers would have to pay for the coal? In the Hauge case the only person the purchaser had contact with was Burgess, the Chicago independent coal dealer. There is nothing in the record in this case to show that at the time the coal was ordered the purchaser was to employ a trucker or to take title to the coal at a point outside of Chicago. In the Waters and Gorman cases the purchasers dealt direct with a Chicago coal company so that they could not [fol. 206] have known that the coal was to come from outside the city limits or that they would be expected to take title to it at a point outside of Chicago.

Appellants rely upon sections 22 and 49 of the Uniform Sales act (chapter 121a, Illinois State Bar Statutes, 1935) to support their contention that the title to the coal passed to the purchasers outside of Chicago. This act provides that property in specific goods is transferred to the buyer "at such time as the parties to the contract intend it to be transferred." (Section 18.) The word "parties" means both parties to the contract. The matter is not left to the arbitrary determination of one of the parties. The very section which appellants cite refutes their contention. Section 19 (paragraph 22—appellants apparently have confused paragraph with section markings) under Rule 5 states:

"If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, * * * the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon."

There can be no doubt that the purchasers in the cases at bar, when placing orders specified and the sellers agreed

that the coal was to be delivered to purchaser Tresca at 2005 W. Cermak road, Chicago, (Hauge Abst. 11, 12) to purchaser Algren at 529 E. 112th street, Chicago, (Waters Abst. 11, 12) and to purchaser Woodard at 4207 S. Parkway, Chicago, (Gorman Abst. 11, 12). Certainly the records do not show that the contracts between the parties provided that the purchasers were expected to send for the coal. Section 46 (paragraph 49) which relates to delivery to a carrier on behalf of the buyer specifically exempts from the general rule (which is, when in the absence of a [fol. 207] contract the seller is authorized or required to send the goods to a buyer, delivery of the goods to a carrier is deemed to be a delivery to the buyer) the cases provided for in section 19, Rule 5, above referred to by us. So, it is not seen that the Uniform Sales act can be of material assistance to appellants in securing the reversal of the judgments.

The authorities relied upon by appellants' counsel to support their point as to the transfer of title are an early Tennessee case, decided in 1856, and an Ontario case. They are not controlling. Neither are they in point. To distinguish the case of Gass and Vestal v. The Corporation of Greenville, 36 Tenn. 62, it seems necessary only to point out what has already been pointed out in this brief, viz., that there is no evidence in the records in the cases at bar establishing the fact that the Chicago customers bought the coal outside of Chicago and hauled it in their own vehicles or employed their own truckers to haul it for them. There is only the unsupported argument of appellants' counsel that the title to the coal passed to the purchasers outside of Chicago and that the truckers were the employees of the purchasers. Likewise the case of Rex v. Woollatt, 11 Ont. L. Rep., 544, need be distinguished only to show that it is a decision based upon a state of facts different from the facts in the cases now before this court. For the same reason it seems unnecessary to discuss the other cases cited on this point in appellants' brief.

We therefore contend that the ordinance is valid and applicable to appellants and the deliveries of coal by them to Chicago customers and that the decision of this court in the case of City of Chicago v. Wisconsin Lime and Cement Company, 312 Ill. 520, which sustained the ordinance and

[fols. 208 & 209] held it essential to secure to purchasers honest weights, should not be disturbed.

Respectfully submitted, Barnet Hodes, Corporation Counsel, Attorney for Appellee. Martin H. Foss, David Lefkovits, Assistant Corporation Counsel, Of Counsel.

[fol. 210] [File endorsement omitted]

[fols. 211-228] In Supreme Court of Illinois

[Title omitted]

Joint Reply Brief and Argument for Appellants—Filed October 12, 1935

May it please the Court:

The statement of the case contained in Appellee's Brief when compared to that of the Appellants' discloses that any conflict in the evidence is immaterial. It is conceded (Appellee's Brief page 4), that the sole ground of defense interposed in the Court below and the principal error relied upon by the Appellants is that the ordinance is invalid as being unreasonable.

[fol. 229] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 230] In Supreme Court of the United States

Statement of Points to be Relied upon and Designation of Parts of Record to be Printed—Filed July 13, 1936

To Honorable Charles Elmore Cropley, Clerk, Supreme Court of the United States, Washington, D. C.:

Pursuant to Rule 13, paragraph 9, of the Rules of the Supreme Court of the United States, the appellant states that the points upon which he intends to rely in the appeal of the above entitled cause are as follows:

1. The Supreme Court of Illinois erred in holding that Section 2947 of the Revised Chicago Code of 1931, under which appellant was convicted, does not deny to the appellant the equal protection of the laws guaranteed to the appellant by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of Illinois erred in holding that said Section 2947 does not deprive the appellant of liberty and property in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

[fol. 231] 3. The Supreme Court of Illinois erred in affirming the judgment of The Municipal Court of Chicago.

The appellant thinks that the following parts of the record are necessary for the consideration of this appeal, page references except where otherwise distinctly indicated being references to the numbers of the unprinted transcript of record now lodged with you:

Transcript page number.	Description of document.
1	Placita.
2 [1] to end of paragraph 3 on page 2 [36] both inclusive.	Pages 1 to end of paragraph 3 on page 36 of the abstract of record originally filed in the Supreme Court of the State of Illinois.
2 [54] commencing marginal page 120 to page 2 [56] both inclusive.	Page 54 of the abstract of record commencing with marginal page 120 through page 56 of said abstract.
3-4	Order of Mr. Justice Wilson dated August 20, 1935, filed August 22, 1935, allowing filing of joint brief in three cases.
5	Excerpt from pages 6 and 7 of the appellant's brief filed September 18, 1935 showing six "Errors Relied On".
6	Order entered October 16, 1935.

Transcript page number.	Description of document.
7-13	Majority opinion of Supreme Court of Illinois filed February 14, 1936.
14	Judgment entered February 14, 1936.
15	Order entered February 19, 1936.
16-21	Petition and suggestions of amicus curiæ that a rehearing be allowed filed February 19, 1936.
22-23	Affidavit of mailing petition and notice of amicus curiæ filed February 19, 1936.
[fol. 232]	
26-28	Notice of intention to file petition for rehearing and affidavit of mailing thereof, filed February 21, 1936.
29	Recital showing filing of petition for rehearing on March 6, 1936. (NOTE.—Omit petition for rehearing and in the printed record please indicate such omission.)
31-33	Dissenting opinion, filed March 11, 1936.
34	Order denying rehearing entered April 24, 1936.
37-39	Assignment of errors filed May 25, 1936.
40-46	Petition for appeal to Supreme Court of the United States, filed May 25, 1936.
47-65	Appellant's jurisdictional statement.

Transcript page number.	Description of document.
	(NOTE.—If the Clerk has previously printed said jurisdictional statement separately and it is proper to omit it from the printed record, then the Clerk will omit pages 47 to 65 in printing the record.)
66-68	Order allowing appeal dated and filed May 29, 1936.
69-72	Supersedeas bond, filed May 29, 1936, certificates attached, etc.
73-75	Notice to appellee required by Rule 12, paragraph 2 (b) of Supreme Court of the United States and proof of service on appellee of such notice and of the documents required to be served by paragraph 2 of said rule, filed June 8, 1936.
76-78	Citation to appellee and proof of service, filed June 8, 1936.
84-85	Notice of filing appellant's præcipe for record and proof of service, filed June 8, 1936.
86-87	Appellee's additional præcipe for record, filed June 13, 1936.
88	Proof of service of appellee's præcipe, filed June 13, 1936.
[fols. 233-34]	
96-119	Appellee's statement opposing jurisdiction.
	(NOTE.—If the Clerk has previously printed appellee's

Transcript page number.	Description of document.
	statement opposing jurisdiction separately and it is proper to omit it from the printed record, then the Clerk will omit pages 96 to 119 in printing the record.)
120-122	Motion of appellee to dismiss appeal or to affirm judgment of the Supreme Court of Illinois.
123	Certificate of Clerk of the Supreme Court of the State of Illinois.
	This statement of points intended to be relied upon and the designation of the parts of the record to be printed filed by appellant and any designation of additional parts of the record to be printed hereafter filed by appellee.

Respectfully submitted, Irwin T. Gilruth, Thomas C. McConnell, Owen Rall, Attorneys for Appellant.

Received a copy of the above document consisting of four typewritten pages, this 11th day of July, 1936.

City of Chicago, Appellee, by Barnet Hodes, Corporation Counsel, City of Chicago, E. S. Martin H. Foss.

[fol. 235] [File endorsement omitted.]

[fol. 236] IN SUPREME COURT OF THE UNITED STATES

APPELLEE'S DESIGNATION OF PARTS OF RECORD TO BE PRINTED —Filed July 17, 1936

To Honorable Charles Elmore Cropley, Clerk, Supreme Court of the United States, Washington, D. C.:

The appellee thinks that the following parts of the record, in addition to the parts designated by appellant, are

material for the consideration of this appeal and therefore designates the same to be printed by the clerk:

1. The pages of the abstract of record filed in the Supreme Court of Illinois not designated by appellant.
2. The portions of appellant's brief filed in the Supreme Court of Illinois not designated for printing by appellant.
3. Brief and argument for appellee filed in the Supreme Court of Illinois.
4. Page 1 of reply brief for appellant filed in the Supreme Court of Illinois.

[fols. 237 & 238] 5. All portions of appellee's statement opposing jurisdiction of the Supreme Court of the United States not designated for printing by appellant.

Respectfully submitted, Martin H. Foss, Counsel for Appellee, City of Chicago.

Received a copy of the above and foregoing appellee's designation of parts of record to be printed, this 15th day of July, 1936.

Irwin T. Gilruth, O. R., Thomas C. McConnell, O. R., Owen Rall, Counsel for Appellant.

[fol. 239] [File endorsement omitted.]

Endorsed on cover: Enter Irwin T. Gilruth. File No. 40,715. Illinois Supreme Court. Term No. 175. Marcus Hauge, appellant, vs. The City of Chicago. Filed July 9, 1936. Term No. 175, O. T., 1936.